United States Court of Appeals

for the Second Circuit

APPENDIX

ORIGINAL

76-1201

B
P/S

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

Appellee,

-against-

FRANK GRADY and
JOHN JANKOWSKI,

Defendants-Appellants.

APPEAL FROM JUDGMENT OF THE
UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF NEW YORK

(D.C. Cr[illegible]. No. 76 Cr. 227)

APPELLANTS' APPENDIX

UNITED STATES COURT OF APPEALS
AUG 16 1976
SECOND CIRCUIT

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UNITED STATES COURT OF APPEALS
FILED
AUG 16 1976
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

PAGINATION AS IN ORIGINAL COPY

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DOCKET ENTRIES

CRIMINAL DOCKET
UNITED STATES DISTRICT COURT

JUDGE BRIEANT

75 CRIM. 43

D. C. Form No. 100 Rev.

TITLE OF CASE	ATTORNEYS
THE UNITED STATES	For U. S.:
vs.	Michael Q. Carey, A' 791-0068
1. FRANK GRADY-all cts.	
2. JOHN JANKOWSKI-1-18	
	For Defendant:

(12) STATISTICAL RECORD	COSTS		DATE	NAME OR RECEIPT NO.	REC.
J.S. 2 mailed	Clerk				
J.S. 3 mailed	Marshal				
Violation	Docket fee				
Title					
18 Sec. 371 Consp. to deal in firearms.(Ct.1)					
18:922,924(a) False records in purchase of firearms.(2-18)					
22:1934 Exporting firearms.(19-28)					
18:1510)bstruction of justice(Ct.29)					
(Twenty-nine Counts)					

DATE	PROCEEDINGS
5-2-75	Filed indictment. B/W ordered as Grady only. Pierce,J.
5-12-75	Deft. Grady(atty. present) Pleads not guilty. Motions returnabl days.Bail $5,000. P.R.B. continued.
	Deft. Jankowski(no atty. present) Court directs entry of not gu plea. Ordered photographed and fingerprinted. Released on his recognizance. Case assigned to Judge Brieant for all purposes. Wyatt,J.
5-14-75	FRANK GRADY- Filed Notice of Appearance of Atty O'Wyer & Benson, 63 Wall St N.Y.C. Tel# 269-3939
5-16-75	FRANK GRADY- Filed the following papers rec'd from Magistrate Raby (Mag#75-(Docket Entry Sheet - Disposition Sheet - Notice of Appearance of Atty. John 63 Wall Street, NYC 10005, Tel# BO-9-3939 - Appearance Bond in the amount o $5,000. w/o security, dated 5-5-7
6-23-75	FRANK GRADY-Filed Deft's notice of Mot a for an order directing disclosur of electronic surveillance .....etc....ret 6-30-75 at 10Am Rm 905.

DATE	PROCEEDINGS
6-23-75	FRANK GRADY-Filed Deft's Memo of Law in support of Motion for severance; Dismissal of Counts 3, etc...
6-23-75	FRANK GRADY-Filed Deft's Notice of Motion for an order to dismiss certain Counts of the Indictment.....ret. 6-30-75 at 2:15 PM in Rm 905.
-23-75	FRANK GRADY-Filed Deft's Notice of Motion for an order directing the U.S. Atty. Paul Curran to produce documents.....ret. 6-30-75, at 2:15PM Rm 905.
6-23-75	FRANK GRADY-Filed deft's Notice of Motion for an order striking as surplusage & Prejudicail the phrase on Ct. 1....ret. 6-30-75 ..at 2:15 PM Rm 905.
6-23-75	FRANK GRANDY-Filed deft's Notice of Motion for an order for a separate trial of Ct. 29 and severing trial od deft, Jankowski from the trial of deft. Grandy.....ret. 6-30-75...at 2:15PM Rm 905.
-30-75	FRANK GRADY- Filed MEMO ENDORSEMENT on Deft's affdvt and Notice of Motion filed 6-23-75 for an order striking as surplusage & prejudicial the phase in Count 1. MOTION DENIED. The Indictment tracks the statute, 22 U.S.C. Sec. 1934 (b), in its use of the term "Implements of War". The words are not surplusage, nor are they, in the contart of this case, unduly prejudicial. SO ORDERED---BRIEANT,J. (m/n 6-30-75)
-21-75	FRANK GRADY- Filed Govt's affdvt in opposition to Deft's motion for Discovery & Inspecti
-21-75	FRANK GRADY- Filed Govt'd Memorandum of Law.
-22-75	FRANK GRADY- Filed Warrant for arrest of Deft - unexecuted.
-22-75	GRADY -Filed Memorandum & Order #43102.....All relief not specifically granted herein, consented to, or directed upon the record at the hearing is denied. .....So Ordered....Brieant,J. rm...
29-75	GRADY & JANKOWSKI- Filed Govt's Notice of Readiness for Trial.
-25-76	Grady & Jankowski-Fld letter from O'Dwyer & Bernstien to Judge Brieant dtd 2-20-76.
-25-76	GRADY-Filed Memorandum & Order#43935.... Having due regard for this latest expression of Law relating to bills of particulars and furnishing the names of witnesses, the Court nevertheless concludes that in the interest of Justice, the Govt. must serve and file a Suppl. Bill of Particulars, which shall state the name of the person(witness) who was the object of the crime in Ct 29 of the indictment. In the event of non-compliance, not excused by reason of an enlargement of time by this Court or a change in the trial date of 3-8-76(in which case such disclosure is to be made 7 days prior to any new trialdate), and absent a stay issued by this Court, or the Court of Appeals pending appeal, this Court will dismiss Ct 29 in the exercise of its inherent power to administer Justice.. See Rule 16(d) (2) FRCrP. So Ordered. . . . Brieant,J. rm
3-01-76	Filed Govt's Bill of Particulars.

DATE	PROCEEDINGS
03-02-76	FRANK GRADY- Filed Deft's affdvt & Notice of Motion for an order pursuant to of the F.R.Cr.P dismissing Counts 1 through 18 & 29.
03-02-76	FRANK GRADY- Filed Deft's Memorandum of Law.
03-08-76	FRANK GRADY- Filed MEMO ENDORSEMENT on Deft's notice of motion for an order dismiss Counts filed 03-02-76. The within motion is deemed to apply to the superceeding Indictment herein 76 CR 0227 CLB and has been resolved as set f on transcrip of hearing (Trial) this date. SO ORDERED...BRIEANT,J. (m/n 3-3- (Fld in 76 Cr 0227)
6-3-76	Filed transcript of record of proceedings, dated 3-4-76
6-3-76	Filed transcript of record of proceedings, dated 3-17-76

DOCKET ENTRIES

0852	GRADY, FRANK	03 08	76	0227
x 0208 1		02		

18:371	Conspr. to viol. Firearms Act.	1
18:922(a), 924(a)	Falsifying firearms purchase records.	2-18
22:1934	Exporting firearms.	19
18:1510	Obstruction of Justice	20

x

5-2-75 03-08-76

Michael Q. Carey
791-0068

O'Dwyer & Bernstein, Kenneth, Bruce
2090 7th Ave.
New York, N.Y. 10027

3-8-76	Filed indictment.
	Deft. (Atty. present) pleads not guilty & R.C.R.
	Deft. motion for severence & dismissal of count 20 is granted with prejudice. Jury trial begun.
3-9-76	Trial cont'd.
3-2-76	Filed Deft's affirt & Notice of motion for an order pursuant to Rule of the F.R.Cr.P dismissing Counts 1 through 18 & 29. (Flt in 75 Cr 4)
3-8-76	Filed MEMO ENDORSEMENT on Deft's notice of motion for an order to dis counts, filed 3-2-76. The within motion is deemed to apply to the su pending Indictment herein 76 Cr 0227 TLB and has been resolved as set forth on transcript of hearing (Trial) this date. SO ORDERED...KEVIN (ENT in 75 CR 435)
3-8-76	Filed Deft's request for voir dire examination.
3-10-76	Trial cont'd. Gov't rests. Courts GRANTS Deft. motion for [illegible] on Counts [illegible]
3-11-7	Trial cont'd.

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3-16-76 Filed Govt's Response to Charge.

3-16-76 Filed Govt's Supplemental Requests to Charge.

3-22-76 ORDER that the time to file Post-Trial Motions is extended to and including 3-26-76. SO ORDERED.....

Filed Deft's Motion & Notice of Motion for an order pursuant to Judgment of acquittal or any other relief.

Filed Deft's Supplemental Memorandum of Law.

4-1-76 Filed Govt's Memorandum of law.

4-7-76 ORDER that Deft's Motion for judgment of acquittal or dismissal & 9 IC, 11, 12, 1976

4-7-76 ORDER that Deft's Motion for judgment of acquittal or dismissal is denied. So ORDERED.....

4-26-76

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DOCKET ENTRIES

	0852	JANKOWSKI, JOHN	02	08	76	0227 02
	x0208 1		02			

OFFENSE CHARGED		COUNTS
18:371	Conspr. to viol. Firearms Act.	1
18:922(m), 924(a)	Falsifying firearms purchase records.	2-18

x

5-2-75 03-08-76

Michael Q. Carey
791-0068

O'Dwyer & Bernstein, Kenneth, Bruce
2090 7th Ave.
New York, N. Y. 10027

3-8-76	Filed indictment.
	Deft. (Attny.) present) pleads not guilty and R. O. R.
	Jury trial begun.
3-9-76	Trial cont'd.
3-10-76	Trial cont'd. [illegible] Court GRANTS Deft. motion for judgment of ACQUITTAL on COUNTS 9,10, [illegible],12,13,14 and 15.
3-11-76	Trial cont'd.
3-12-76	Trial cont'd and concluded. Deft. GUILTY on COUNTS 1,2,,3,4,5,6,7,8, [illegible],16 & [illegible] P.S.I. ordered. sentence adj'd to 4-23-76. T.C.T. .....BARTELS,J.
3-18-76	Filed Gov't Requests to Charge.
3-18-76	Filed Gov't Supplemental Requests to Charge.
3-22-76	Filed Stip & Order that the time to file post-trial [illegible] is extended up to and including [illegible].
4-1-76	Filed [illegible]

DOCKET ENTRIES

4-26-76	Notice of Appeal to the U.S.C.A. for the 2nd Circuit from the Judgment entered in this action on 4-23-76. (Copies mailed 4-29-76).
5-26-76	Record certification of record to USCA on 5-26-76

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------x

UNITED STATES OF AMERICA

- v -

FRANK GRADY and JOHN JANKOWSKI,

Defendants.
----------x

The Grand Jury charges:

1. From on or about January, 1970 up to and including the date of the filing of this indictment, in the Southern District of New York, FRANK GRADY and JOHN JANKOWSKI, the defendants, unlawfully, wilfully and knowingly, did combine conspire, confederate and agree together and with others to the Grand Jury known and unknown (hereinafter referred to as the "unindicted co-conspirators") to commit offenses against the United States, to wit, to violate Title 18, United States Code, Sections 922(m), 923 and 924(a).

2. It was part of said conspiracy that the defendant FRANK GRADY would cause the defendant JOHN JANKOWSKI, a licensed firearms dealer doing business as J&J Bait Shop, 32 Yonkers Avenue, Yonkers, New York,

and the unindicted co-conspirators, to enter their names in the Federal Firearms Record, a record which the defendant JOHN JANKOWSKI was required to keep pursuant to Title 18, United States Code, Section 923 and the regulations promulgated thereunder (hereinafter referred to as the "log book"), as the purchasers of .30 cal. semi-automatic rifles.

3. It was further a part of said conspiracy that the defendant JOHN JANKOWSKI unlawfully, wilfully and knowingly would make false entries in, fail to make appropriate entries in and fail to properly maintain the log book in violation of Title 18, United States Code, Section 922(m), in that the unindicted co-conspirators and the defendant JOHN JANKOWSKI would falsely enter their names and addresses in the log book as the true purchasers of .30 cal. semi-automatic rifles.

4. It was further a part of said conspiracy that the defendant FRANK GRADY would issue to each of the unindicted co-conspirators a document which would purport to show that the unindicted co-conspirator had transferred to a third party each .30 cal. semi-automatic rifle allegedly purchased by the unindicted co-conspirator at J&J Bait Shop, 32 Yonkers Avenue, Yonkers, New York.

5. It was further a part of said conspiracy that the defendant FRANK GRADY and the unindicted co-conspirators unlawfully, wilfully and knowingly would export from the United States, arms, ammunition and implements of war, including the firearms allegedly purchased by the unindicted co-conspirators, in violation of Title 22, United States Code, Section 1934, without having first obtained a license therefore or written consent from the Department of State or an exemption from this requirement.

OVERT ACTS

In furtherance of said conspiracy and to effect the objects thereof, the following overt acts were committed in the Southern District of New York:

1. In or about May, 1970, the defendant, FRANK GRADY entered his name in the log book at J&J Bait Shop, 32 Yonkers Avenue, Yonkers, New York, as the purchaser of two .30 cal. semi-automatic refles, numbers 172218 and 173209, respectively.

2. On or about May 6, 1970, an unindicted co-conspirator entered his name in the log book at J&J Bait Shop, 32 Yonkers Avenue, Yonkers, New York as the

purchaser of two .30 cal. semi-automatic rifles, numbers 169173 and 167659, respectively.

3. In or about May, 1970 an unindicted co-conspirator entered his name in the log book at J&J Bait Shop, 32 Yonkers Avenue, Yonkers, New York, as the purchaser of two .30 cal. semi-automatic rifles, numbers 170426 and 172757, respectively.

4. In or about May, 1970, an unindicted co-conspirator entered his name in the log book at J&J Bait Shop, 32 Yonkers Avenue, Yonkers, New York as the purchaser of two .30 cal. semi-automatic rifles, numbers 168111 and 167661, respectively.

5. In or about May, 1970 and in or about July, 1970, an unindicted co-conspirator entered his name in the log book at J&J Bait Shop, 32 Yonkers Avenue, Yonkers, New York as the purchaser of two .30 cal. semi-automatic rifles, numbers 171189 and 171776, respectively.

6. On or about May 7, 1970, JOHN JANKOWSKI, the defendant, entered his name in the log book at the J&J Bait Shop, 32 Yonkers Avenue, Yonkers, New York as the purchaser of one .30 cal. semi-automatic rifle, number 172315.

7. On or about July 19, 1970, an unindicted co-conspirator entered his name in the log book at the J&J Bait Shop, 32 Yonkers Avenue, Yonkers, New York, as the purchaser of two .30 cal. semi-automatic rifles, numbers 169302 and 171900, respectively.

8. On or about July 20, 1970, an unindicted co-conspirator entered his name in the log book at J&J Bait Shop, Yonkers Avenue Yonkers, New York as the purchaser of two .30 cal. semi-automatic rifles, numbers 168666 and 170094, respectively.

9. On or about July 21, 1970, an unindicted co-conspirator entered his name in the log book at J&J Bait Shop, 32 Yonkers Avenue, Yonkers, New York as the purchaser of two .30 cal. semi-automatic rifles, numbers 166438 and 171744, respectively.

10. On or about July 22, 1970, an unindicted co-conspirator entered his name in the log book at J&J Bait Shop, 32 Yonkers Avenue Yonkers, New York as the purchaser of two .30 cal. semi-automatic rifles, numbers 169603 and 170891, respectively.

11. On or about July 24, 1970, an unindicted co-conspirator entered his name in the log book at J&J Bait Shop, 32 Yonkers Avenue, Yonkers, New York as the

purchaser of one .30 cal. semi-automatic rifle, number 170633.

(Title 18, United States Code, Section 371.)

COUNTS TWO THROUGH EIGHTEEN

The Grank Jury further charges:

On or about the dates hereinafter set forth, in the Southern District of New York, JOHN JANKOWSKI, who at all times relevant to this indictment was a licensed dealer in firearms doing business as J&J Bait Shop, 32 Yonkers Avenue, Yonkers, New York, and FRANK GRADY, the defendants, unlawfully, wilfully and knowingly did make and cause to be made false entries in records which were required to be kept pursuant to Section 923 of Title 18, United States Code and regulations promulgated thereunder, to wit, the log book, and did fail and cause to fail to make appropriate entries in, and to maintain said records with respect to the transfer of the firearms hereinafter identified in Counts Two through Eighteen:

Count	Date	Universal Firearms Corporation .30 cal. Semi-Automatic Rifle Serial Number
2	May 6, 1970	169173
3	May 6, 1970	167659
4	May 6, 1970	170426
5	May 6, 1970	168111
6	May 7, 1970	171189
7	May 8, 1970	172767
8	May 8, 1970	167661
9	July 19, 1970	169302
10	July 19, 1970	171900
11	July 20, 1970	168666
12	July 20, 1970	170094
13	July 21, 1970	166438
14	July 21, 1970	171744
15	July 21, 1970	171776
16	July 22, 1970	169603
17	July 22, 1970	170891
18	July 24, 1970	170633

(Title 18, United States Code, Sections 2, 922(m) and 924 (a); Title 26, Code of Federal Regulations, Section 178.125(e).)

COUNTS NINETEEN THROUGH TWENTY EIGHT

The Grand Jury further charges:

During the period between May 1, 1970 and the date of the filing of this indictment, in the Southern District of New York and elsewhere, the defendant FRANK GRADY unlawfully, wilfully and knowingly did export from the United States the firearms on the United States Munitions List hereinafter identified in counts Nineteen through Twenty-Eight of this indictment, without first having obtained a license therefore or written approval therefore from the Department of State or an exemption from such requirements:

Count	Universal Firearms Corporation .30 Cal. Semi-Automatic Rifle Number
19	169173
20	167659
21	168111
22	171189
23	167661
24	171900
25	170094
26	166438
27	170633
28	172218

(Title 22, United States Code, Section 1934; Title 22, Code of Federal Regulations, Sections 121 et seq.; Title 18, United States Code, Section 2.)

COUNT TWENTY-NINE

The Grand Jury further charges:

During the period between May 1, 1970 and the date of the filing of this indictment, in the Southern District of New York, the defendant FRANK GRADY unlawfully, wilfully and knowingly did endeavor by means of bribery, misrepresentation, intimidation, force and threats of force to obstruct, delay and prevent a person from communicating information relating to criminal violations of the firearms and munitions control laws of the United States to investigators duly authorized to engage in investigations of such violations.

(Title 18, United States Code, Section 1510.)

Foreman

PAUL J. CURRAN
United States Attorney

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------x

UNITED STATES OF AMERICA

- v -

FRANK GRADY and JOHN JANKOWSKI,

Defendants.

----------x

COUNT ONE

The Grand Jury charges:

1. From on or about January, 1970 up to and including the date of the filing of this indictment, in the Southern District of New York, FRANK GRADY and JOHN JANKOWSKI, the defendants, unlawfully, wilfully and knowingly, did combine, conspire, confederate and agree together and with others to the Grand Jury known and unknown to commit offenses against the United States, to wit, to violate Title 18, United States Code, Sections 922(m) and 923.

2. It was part of said conspiracy that the defendant JOHN JANKOWSKI, a licensed firearms dealer doing business as J&J Bait Shop, 32 Yonkers Avenue, Yonkers, New York, unlawfully, wilfully and knowingly

would make false entries in, fail to make appropriate entries in and fail to properly maintain the Federal Firearms Record, a record of the names of purchasers of firearms which the defendant JOHN JANKOWSKI was required to keep pursuant to Title 18, United States Code, Section 923 and the regulations promulgated thereunder (hereinafter referred to as the "log book"), in violation of Title 18, United States Code, Section 922(m).

3. It was further a part of said conspiracy that the defendants FRANK GRADY and JOHN JANKOWSKI, would and did cause to be entered in the log book, as the purchasers of .30 caliber semi-automatic rifles, the names of persons who had not in fact purchased said rifles.

4. It was further a part of said conspiracy that the defendant FRANK GRADY would issue to each person whose name was entered in the log book as described above a document which indicated that each such person had transferred to a third party the .30 caliber semi-automatic rifles shown in the log book as purchased by him.

OVERT ACTS

In furtherance of said conspiracy and to effect the objects thereof, the following overt acts were committed in the Southern District of New York.:

1. On or about May 4, 1970 and on or about May 7, 1970, the defendant FRANK GRADY entered his name in the log book at J&J Bait Shop, 32 Yonkers Avenue, Yonkers, New York, as the purchaser of two .30 caliber semi-automatic rifles, numbers 172218 and 173209, respectively.

2. On or about May 6, 1970, the defendants FRANK GRADY and JOHN JANKOWSKI caused a person to enter his name in the log book at J&J Bait Shop, 32 Yonkers Avenue, Yonkers, New York as the purchaser of two .30 caliber semi-automatic rifles, numbers 169173 and 167659, respectively, when in fact such person was not the true purchaser.

3. On or about May 6, 1970, the defendants FRANK GRADY and JOHN JANKOWSKI caused a person to enter his name in the log book at J&J Bait Shop, 32 Yonkers Avenue, Yonkers, New York, as the purchaser of two .30 caliber semi-automatic rifles, numbers 170426 and 172767, respectively, when in fact such person was not

the true purchaser.

4. On or about May 6, 1970, the defendants FRANK GRADY and JOHN JANKOWSKI caused a person to enter his name in the log book at J&J Bait Shop, 32 Yonkers Avenue, Yonkers, New York as the purchaser of two .30 caliber semi-automatic rifles, numbers 168111 and 167663, respectively, when in fact such person was not the true purchaser.

5. On or about May 6, 1970 and on or about July 21, 1970, the defendants FRANK GRADY and JOHN JANKOWSKI caused a person to enter his name in the log book at J&J Bait Shop, 32 Yonkers Avenue, Yonkers, New York as the purchaser of two .30 caliver semi-automatic rifles, numbers 171189 and 171776, respectively, when in fact such person was not the true purchaser.

6. On or about May 7, 1970, JOHN JANKOWSKI, the defendant, entered his name in the log book at the J&J Bait Shot, 32 Yonkers Avenue, Yonkers, New York as the purchaser of one .30 caliber semi-automatic rifle, number 172315.

(Title 18, United States Code, Section 371.)

COUNTS TWO THROUGH EIGHTEEN

The Grand Jury further charges:

On or about the dates hereinafter set forth, in the Southern District of New York, JOHN JANKOWSKI, who at all times relevant to this indictment was a licensed dealer in firearms doing business as J&J Bait Shop, 32 Yonkers Avenue, Yonkers, New York, and FRANK GRADY, the defendants, unlawfully, wilfully and knowingly did make and cause to be made false entries in records which the defendant JOHN JANKOWSKI was required to keep pursuant to Section 923 of Title 18, United States Code and regulations promulgated thereunder, to wit, the Federal Firearms Record, and did fail and cause to fail to make appropriate entries in and to maintain said record with respect to the transfer of the firearms hereinafter identified in Counts Two through Eighteen:

Count	Date	Universal Firearms Corporation .30 Caliber Semi-Automatic Rifle Serial Number
2	May 6, 1970	169173
3	May 6, 1970	167659
4	May 6, 1970	170426

Count	Date	Universal Firearms Corporation .30 Caliber Semi-Automatic Rifle Serial Number
5	May 6, 1970	168111
6	May 7, 1970	171189
7	May 8, 1970	172767
8	May 8, 1970	167661
9	July 19, 1970	169302
10	July 19, 1970	171900
11	July 20, 1970	168666
12	July 20, 1970	170094
13	July 21, 1970	166438
14	July 21, 1970	171744
15	July 21, 1970	171776
16	July 22, 1970	169603
17	July 22, 1970	170891
18	July 24, 1970	170633

Title 18, United States Code, Sections 2, 922(m) and 924(a); Title 26, Code of Federal Regulations, Section 178.125(e).)

COUNT NINETEEN

The Grand Jury further charges:

During the period between May 1, 1970 and the date of the filing of this indictment, in the

Southern District of New York and elsewhere, the defendant FRANK GRADY unlawfully, wilfully and knowingly did export from the United States the firearms on the United States Munitions List hereinafter identified, without first having obtained a license therefor or written approval therefor from the Department of State or an exemption from such requirements:

Universal Firearms Corporation
.30 Caliber Semi-Automatic
Rifle Number

169173

167659

168111

171189

167661

171900

170094

166438

170633

172218

(Title 22, United States Code, Section 1934; Title 22, Code of Federal Regulations, Sections 121 et seq.; Title 18, United States Code, Section 2.)

COUNT TWENTY

The Grand Jury further charges:

During the period between October 24, 1973

COUNT TWENTY

The Grand Jury further charges:

During the period between October 24, 1973 and September 5, 1974, in the Southern District of New York, the defendant FRANK GRADY unlawfully, wilfully and knowingly did endeavor by means of bribery, misrepresentation, intimidation, force and threats of force to obstruct, delay and prevent Edward McMorris from communicating information relating to criminal violations of the firearms and munitions control laws of the United States to investigators duly authorized to engage in investigations of such violations.

(Title 18, United States Code, Section 1510.)

Foreman

ROBERT B. FISKE, JR.
United States Attorney

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA	Befo: HON. CHARLES L. BRIEANT, District Judge
vs.	and a Jury
FRANK GRADY and JOHN JANKOWSKI,	76 CRIM. 227(CLB)
Defendants.	

New York, March 8,9,10,11, 1976
March 12, 1976

STENOGRAPHER'S MINUTES

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. – 791-1020

CLERK'S
RETURN TO REPORTERS
ROOM 506 FOR FILING

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, :

-against- : 76 Cr 227 CLB

FRANK GRADY and JOHN JANKOWSKI, :

Defendants. :

BEFORE: HON. CHARLES L. BRIEANT,

District Judge

New York, New York
March 8, 1976 - 10 a.m.

APPEARANCES:

ROBERT B. FISKE, JR., ESQ.
United States Attorney for the
Southern District of New York
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(A jury was duly empaneled and sworn.)

(Mr. Carey made an opening statement on behalf of the government.)

(Mr. Durkan made an opening statement on behalf of the defendant Grady.)

(Mr. Bruce made an opening statement on behalf of the defendant Jankowski.)

THE COURT: Mr. Carey, you may call your first witness.

MR. DURKAN: If your Honor please, I have a motion which I would like to make out of the presence of the jury. Maybe we can do it at the side bar.

THE COURT: All right.

(At the side bar.)

MR. DURKAN: Does your Honor have any objection if Mr. Holman speaks?

THE COURT: Not at all, but I would like anyone speaking to speak softly enough and face the reporter, rather than the jury.

MR. HOLMAN: At this time the defendant Grady would move to dismiss Count 19, your Honor, based on the opening statement of the government. The only evidence that they intend -- the only proof they intend to offer with respect to Count 19 is that Mr. Grady told some

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rdbr 2 O'Brien-direct

J O H N J. O ' B R I E N, called as a witness on behalf of the government, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. CAREY:

Q Mr. O' rien, what is your profession?

A I work for the City of Yonkers. Unemployed now, laid off.

THE COURT: What did you do for the City?

THE WITNESS: Janitor, Recreation Department.

Q When were you last employed by the City of Yonkers?

A January 16th, this year.

Q For how long prior to that had you been employed by the City of Yonkers?

A 16-1/2 years.

Q Do you know a man by the name of Frank Grady?

A Yes.

Q Do you see him in this courtroom?

A I do.

Q Would you please indicate to the jury and to the Court where you see him seated?

A Over there with the purple shirt.

MR. CAREY: Mr. Durkan?

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May the record ...lect that the witness has identified the defendant Grady?

THE COURT: Yes, the record will so indicate.

Q When did you first meet Frank Grady?

A I knew him almost all my life, I guess.

Q Directing your attention to the first half of 1970 did there come a time when Frank Grady asked you to do a favor for him?

MR. DURKAN: Objection to the form.

THE COURT: Overruled.

MR. DURKAN: I am objecting to the form of the question.

THE COURT: I am overruling the objection to form. Let's go on with this trial.

Did he say to you in words or substance he would like you to do him a favor?

TEH WITNESS: Pardon me?

THE COURT: Frame another question, Mr. Carey.

Q In the early part of 1970 did you and Frank Grady have a discussion about doing something for him?

A Yes.

Q When did you have that discussion?

A The early part of May, 1970, I guess.

Q And where did you have that discussion?

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A Numerous places. Different bars. We were putting on shoes.

Q I am sorry, what did you say?

A We were putting on shoes at that time.

Q And who was present at these discussions?

A Frank, myself, John Caseey, Billy Dennehy, Tom Duffy, Martin Lyons, a few other people I can't recall right now.

Q And when you say you were putting on shows would you please tell the jury who was putting on what kind of shows?

A Tom Duffy was putting on little minstrels, like, for the Irish causes, to send money over to the people in Ireland in six counties.

Q Was there an organization that was running those minstrels?

A Not at that time?

Q What, if anything, did Frank Grady say to you and what did you say to him on these occasions when he asked you to do something for him?

THE COURT: Can't we take them one at a time?

Q Do you recall the first time when Frank Grady asked you to do something for him?

A When he come up to where I worked after me, yes.

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Q Would you please tell the jury who was present at that time?

A Martin McCarthy, myself and Frank.

MR. DURKAN: May we have the date fixed, your Honor, or at least an approximate date?

Q When in 1970 did that happen?

A The first week of May. Early part of May.

Q Would you tell the jury what, if anything, you, Frank Grady and Martin McCarthy said at that time?

A You are getting ahead of yourself now.

MR. BRUCE: I object, Judge.

THE COURT: I will take it subject to connection.

Q Please tell the jury what happened at that time, and then we can go back.

A He wanted me to go down --

MR. BRUCE: Objection unless he specifies who.

THE WITNESS: Frank Grady and Martin Mc Carthy tried to convince me --

THE COURT: What did they say to you in substance?

THE WITNESS: They wanted me to go down and sign for two rifles.

THE COURT: They told you that?

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THE WITNESS: Yes.

THE COURT: Who of them told you that?

THE WITNESS: Martin McCarthy and Frank Grady.

THE COURT: They each told you that?

THE WITNESS: They tried to convince me to go down and sign. It was legal.

Q What else did they say to you?

A I said no. I have a Civil Service job. I didn't want to get mixed up with this gun stuff.

Q What else did they say to you when they told you that?

A They got kind of huffy. I didn't want to start no trouble, so Martin and I went down. Frank said he was already there, he signed, and for us to go down and sign. It is legal, they said. I knew nothing about the law, guns laws or any other law. They convinced me it was legal.

I went down and signed the book.

Q Was this the first time you discussed it?

A This was after.

Q When before that had you discussed it with them?

A At one of the meetings. I can't be sure where the meeting was held. Martin Lyons said that things were pretty rough over there, which they were at that time.

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The people were taking a very bad beating and there was no help coming from nobody. So we had to send some stuff over to those people.

Q Who said that, Martin Lyons?

A Martin Lyons.

Q Who else was present at that time?

A Frank Grady, myself, Billy Dennehy, John Casey, Martin McCarthy, a few other people I can't recall right now.

Q What else was said by anyone else that was present including Frank Grady, at that time?

A We all agreed that this had to be, but in a legal way. As long as nobody got involved, because we were all new to this stuff. We didn't know about any kind of laws at all but we were convinced to go in and sign the book and ever thing would be all right.

Q And was Martin McCarthy and Frank Grady who convinced you of that?

A When they came up to get me to go down.

Q When before that,if at all, did you have any other discussions about signing for these rifles?

A Well, Martin asked me do I know the man up on Yonkers Avenue. I said yes. John, John Jankowski.

Q And who was that Martin you just referred to?

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A Lyons. So I said that John is a very good man and he understands the situation because he was in prison --

MR.BRUCE: I object to what he understands.

THE COURT: Well, I will take it subject to connection as to your client and you have a reserved motion to strike.

The jury will pay careful attention to the fact that according to thiswitness Mr. Jankowski was not present at the time this statement was made. The witness testified Mr. Grady and others were present but not Mr. Jankowski. It is important for you to keep these matters clear in your minds.

Go ahead, Mr. Carey.

Q Please continue to tell the jury what it was that was said at that time.

A I said that I know Mr. Jankowski, John. He was in a Russian prison camp. He understands what the people in Ireland are going through because he went through the same thing. He has scars all over his body to prove it. So I brought Martin down, Lyons, introduced him to him. John said that everything has to be -- for every two guns that leave here you have to sign. I want a signature for everybody.

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THE COURT: Who told you that?

THE WITNESS: Mr. Jankowski.

THE COURT: Who was present at that time?

THE WITNESS: Lyons and myself, I guess.

Q Do you see Mr. Jankowski in his courtroom?

A John right there, yes.

Q Could you describe how he's dressed?

A Brown suit, yellow shirt.

MR. CAREY: May the record reflect the witness has identified the defendant Jankowski?

THE COURT: Yes, the record will so indicate.

Q Now, you said earlier there was a time when you yourself went down to John Jankowski's store. Would you please tell the jury where that store is located?

A Yonkers Avenue, 34 Yonkers Avenue. I forget the exact address.

Q Do you know the name of the store?

A J & J Bait Shop.

Q Did there come a time when you entered the store?

A Martin McCarthy and I went down to sign the book.

Q Who was present in the store when you entered?

A John Jankowski, Martin McCarthy and myself.

Q Would you please tell the jury what, if anything, was said or done at that time by those people who were present?

A We come --

MR. DURKAN: I object to anything that was said as not binding on Grady.

THE COURT: You have a reserve motion to strike and I am taking it subject to connection.

Here again, members of the jury, this is an incident of which the witness has testified that Mr. Jankowski was there but Mr. Grady was not there.

Go ahead, sir.

Q Mr. O'Brien, please tell the jury whatwas said and done by the people who were present?

A Martin went down, McCarthy, myself, went into the store. Frank was up the street near the bath house. Come in to sign the book.

Q Who said that?

A Me or Martin McCarthy, exactly who said it.

THE COURT: Who did you say that to?

THE WITNESS: Well --

MR. DURKAN: He said we went in to sign the book. He didn't say anyone said it to him.

THE COURT: Let us get it straight. When you

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went into the store what, if anything, did you say and what did Martin say and what, if anything, did Mr. Jankowski say?

THE WITNESS: WE said that we come in to sign the book.

THE COURT: One of you said that?

THE WITNESS: Either me or Martin Mc Carthy. John got out the book, Martin signed first and then I signed after Martin.

Q Did you see Mr. McCarthy sign the book?

A Yes. I was to the left o him -- to the right of him.

Q What, if anything, did Mr. Jankowski say about the time you were signing the book?

A He said "Jack, you don't have to sign the today."

Martin says, "He's here with me, he has to sign now."

I was working at that time. I didn't want to cause any trouble.

I said "John, it is perfectly legal. Those people convinced me it is legal. I will sign the book just to keep the peace."

I signed the book twice.

Q Did anything else happen or was anything else

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said while you were in teh store?

A No. As soon as I signed I walked out and went back to work.

Q Did you pay any money to Mr. Jankowski for the rifle for which you signed?

A No.

Q Did Mr. Jankowski ask you to pay him for the rifle for which you signed?

A No.

Q Did you ever see the rifle for which you signed?

A No.

Q Did you ever authorize anybody else to receive that weapon, that rifle for you?

A No.

Q Do you know whatever happened to that rifle?

A No.

Q Did there come a time after you signed Mr. Jankowski's book when you spoke to Mr. Grady about it?

A There was a meeting a few days after up in the Chippawa Club. They came up to form a chapter of Northern Aid then, about maybe three or four days after.

Q Tell the jury what the Chippawa Club is and where it is located?

A 6th Ward Democratic Club in North Yonkers.

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Q Please tell the jury what the Northern Aid Committee was that they were going to form?

A Relief committee to help the people of Northern Ireland.

Q What is the full name of that committee?

A Irish Northern Aid Committee.

Q Who, if anyone, was present at that meeting?

A Myself, Frank Grady, Martin McCarthy, some fireman, I don't now who he was, John Casey, Mart Mc Carthy, Martin Lyons, Mike Flannery, John McGowan, Jack McCarthy and a few others I can't recall.

Q Was Mr. Dennehy there?

A Yes.

Q What is Mr. Dennehy's full name?

A Billy, William.

Q Would you please tell the jury what, if anything, was said or done by you at that meeting?

A They were talking about forming a chapter of Irish Northern Aid and I just wanted -- I was supposed to be given that night a paper, a transfer paper. The ones that I signed for were purchased -- was transferred to this man. So either Martin Lyons or Frank Grady gave me a paper and said "Jack, anybody ask you any questions about the rifles you purchased, you transferred them to this person."

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I forget the first name. Armstrong was the last name. I just signed my name there and that was it. The rest was all filled in for me.

Q Did you have anything to do with the transfer of the rifles indicated on that document?

A Nothing whatsoever.

Q Was that document typed or handwritten?

A Typed.

Q Any portions of it which were handwritten?

A Not that I recall.

Q Did there come a time when you signed it or were asked to sign it?

A Right there it was handed to me. Just my nmae.

Q When you went into Mr. Jankowski's store, to take you back, did Mr. Jankowski ever ask you why you were there?

A He knew. We discussed it.

THE COURT: No. Just answer the attorney's question. Did he ever ask you why you were there?

THE WITNESS: No.

Q On how many occasions did you go to Mr. Jankowski's store?

A Quite often. I bought my lottery tickets there.

Q How often did you go there and sign his book as a

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purchaser of a weapon?

A Just once.

Q How many weapons did you sign for at that time?

A Two.

Q How many weapons did Martin McCarthy sign for at that time?

A Two.

Q Did you see Mr. McCarthy pay Mr. Jankowski money?

A No.

Q Did you see Mr. McCarthy receive any rifle?

A No.

Q Did you hear Mr. Jankowski ask Mr. McCarthy to pay for a rifle?

A No.

Q When you were in Mr. Jankowski's store did youmake any written or mental note of the serial numbers of the weapons for which you signed?

A No.

Q I show you what has been pre-marked as Government Exhibit 9 for identification and I direct your attention to pages 8 and 9. Can you identify that?

A That's my signature and address, both places.

MR. CAREY: The witness has indicated two lines

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on which appear the name John J. O'Brien, and the address 25 Overlook Terrace, Yonkers, New York.

THE WITNESS: Right.

Q Is that a signature which you put in the book?

A That's my signature, right.

Q And what is this document?

MR. DURKAN: Objection.

THE COURT: If he knows.

A Federal Firearms Record.

Q And is this the record which you signed at John Jankowski's store?

A It must be. My name is there.

MR. DURKAN: Objection what it must be.

THE COURT: Yes, I will strike it out. The part of the answer where he says that my name is there will stand.

Is that your signature is what he is asking you?

THE WITNESS: Yes, your Honor.

Q Mr. O'Brien, I show you what has been marked Government's Exhibit 9-A for identification. Is that a complete and accurate enlargement of pages 8 and 9 of Government Exhibit 9?

A Right.

MR. CAREY: Your Honor, Government offers Government Exhibits 9 and 9-A, each for identification, in

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evidence.

THE COURT: Why don't you wait for the opportunity for counse to look at it and I will take them up later.

MR. CAREY: I wanted to give the jury the opportunity to see the entries made by Mr. O'Brien as they questioned him about it.

THE COURT: Show it to counsel.

Any objection to the book?

MR. DURKAN: Are we dealing with one exhibit or two?

THE COURT: As I understand it,we are dealing with the same exhibit. One is a photographic blowup of the signatures.

MR. DURKAN: If your Honor pleases, I will object to a photographic blowup. We have the alleged real signature here.

THE COURT: You will have an opportunity to compare the photographic blowup to see if it is an accurate comparison.

This witness didn't make the photograph.

MR. CAREY: No, your Honor.

THE COURT: Any objection to Exhibit 9?

MR. DURKAN: I have no objection, your Honor, to that portion of the exhibit which bears the witness'

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signature that he has identified. I am objecting to any of the rest of it.

THE COURT: Overruled.

How aboutvou, Mr. Bruce?

MR. BRUCE: I join in the objection.

THE COURT: Same ruling.

MR. DURKAN: May we have a side bar on this, your Honor?

THE COURT: Yes.

Members of the jury, you may take a short recess. Don't discuss the case.

(Jury leaves.)

THE COURT: You see, the rule of completeness would permit the entire page to come in. I don't see what the objection is.

MR. DURKAN: I do have a specific objection. Your Honor, this page of the document which has been identified over my objection as the Federal Firearms Record contains a whole list --

THE COURT: It says right on its face that's what it is, doesn't it?

MR. DURKAN: That's what it says here. On the part where he signed his name, right-hand side, page 9, it has a whole list of names, at least ones that have been

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mentioned in this trial. Starting with Frank Grady, which is the second or third from the top, running all the way to the bottom. To admit the entire page into the record may be prejudicial because some of the entries that are in there in that page are concerned with counts that the U.S. Attorney has moved to receive and which may well be dismissed at the end of the government's case, assuming no testimony comes in as to them.

THE COURT: If it is necessary to give a clarifying instruction at the end of the case about to what purpose this exhibit may be used, I will entertain an application for such a request.

I must say to you that it is a record which the law requires to be kept. It is, on its face, appears to be genuine and this witness identified it.

He said he was here to sign the book and he signed it and his signature is on there.

You know, all evidence is prejudicial. That's what Judge Learned Hand says.

MR. DURKAN: O'Brien says it is a Federal Firearm Record. How do we know that's what it is?

THE COURT: I assume he will have an agent testify to that.

MR. HOLMAN: It should come in now.

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THE COURT: Let's not concern ourselves with that type of problem. We have enough serious ones.

MR. BRUCE: I join in my colleague's position that this constitutes an exception to the hearsay rule, and if it is going to be an exception to the hearsay rule it must be rigidly qualified in order to be introduced under the exception. I know the government is trying to get it in as, as a record kept in the usual course of business.

THE COURT: Mr. Brien has testified, and there i no reason to disbelieve this part of his testimony, that this book was in the store, that it bore on the top left-hand page the indication Federal Firearms Record, and that he said we are here to sign the book and he and the co-defendant Grady then signed the book then and there in the store. That would make it admissible even if it were only a Blumberg diary.

MR. DURKAN: You said the co-defendant agreed. I assume you meant the other man McCarthy.

THE COURT: No, I don't. Grady's signature is in there too. He told this witness.

However, I will stand corrected.

MR. CAREY: What your Honor is referring to is this witness' testimony that Grady told him that he had already signed.

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THE COURT: Yes. Mr. Durkan is quite correct.

All right, can we finish this witness before we break forthe day? I understand Mr. Bruce has a date with another judge.

MR. BRUCE: That's true.

THE COURT: We will call and tell him you will be a little bit late.

We will be in recess for about five minutes.

(Recess.)

(In open court, jury not present.)

THE COURT: Have counsel had an opportunity to look at the documents?

MR. DURKAN: It is irrelevant and immaterial.

THE COURT: I will instruct the jury that the enlargement is not the best evidence. It is only for the convenience in following the testimony.

If you have any enlargements show it to counsel tonight.

MR. DURKAN: While we are on the record, I object not only to its irrelevancy but it contains material which is a subject matter of proof here and is being offered, I presume, as proof --

THE COURT: I will give a limiting instruction as to all entries which are not authenticated. The entire

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page can come in and the enlargement is only for convenience. It has no greater evidentiary value simply because it has been blown up. I will practically tell them that in those words.

Mr. Carey, don't flash these things without giving counsel an opportunity to see them first.

MR. CAREY: The jury had not seen it, as far as I know. They only saw the back of it.

MR. DURKAN: I have the same objection to this one, too, your Honor.

THE COURT: He is not using that at all.

(Jury present.)

THE COURT: Members of the jury, the Court is receiving in evidence Exhibit 9, which is pages from a book, two open pages facing each other, about which this witness has just testified. I want to caution you that you can only consider those entries or lines in the page about which there is testimony and you can't draw any inference about entries or lines on the page as to which there is no evidence.

Also the U.S. Attorney has sort of a photographic blow up. Now, that is being used solely for convenience in the trial. It has no separate evidentiary value by itself whatsoever. It is just a convenience in handling papers so more than one person can look at them at a time.

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You must not draw any inference about a document simply because it has been blown up photographically for convenience. The real evidence in the case is the original document, but you can use blow-ups for photographic enlargements as a matter of convenience. That's all it is for. It doesn't have any deep meaning or any special significance.

All right.

Receive 9 and 9-A.

(Government's Exhibits 9 and 9-A were received in evidence.)

MR. CAREY: Your Honor, I am attempting to hold this up so the jury will be able to see it.

Q Mr. O'Brien, can you swivel in your chair and point out to the jury where your name appears in the enlargement marked Government Exhibit 9-A?

A Here and here.

MR. CAREY: Indicating the two lines with the names John J. O'Brien appearing.

THE COURT: That is your signature appearing in each case?

THE WITNESS: Right, your Honor.

Q Tell the jury which portions of those two lines from the left side of Government Exhibit 9-A to the far right side you yourself completed.

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A My name and address.

Q And did you also complete the date section to the left of your name?

A Not that I can recall, no.

Q And is that your true name and was that at that time your true address?

A That is right.

Q Were you the purchaser of the Universal M-1 carbine located next to your name?

A No.

MR. DURKAN: Objection.

THE COURT: I will sustain the objection. It calls for a conclusion. Strike out the answer.

Q Was it the Universal M-1 carbine listed on that document to the left of your name ever transferred to you?

A No.

Q I show you Government's Exhibit 10 for identification. Can you identify that?

A That's the paper that was handed to me up at the Chippawa Club. I was told that I transferred these -- anybody ask me any questions I transferred these rifles to Patrick Armstrong. My name on the top and on the bottom I signed and that was it.

MR. CAREY: The government offers Government

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Exhibit 10 in evidence.

MR. DURKAN: I object to it, your Honor. He said it was handed to him by either Grady or Lyons. He didn't know which one.

THE COURT: Would you tell us again who was present when this was handed to you?

THE WITNESS: Martin Lyons, Frank Grady, myself, Billy Dennehy, Martin McCarthy, Jack McGowan, Mike Flanney, some fireman, and I don't know his name, and a few others.

THE COURT: You don't know which of those people handed it to you?

THE WITNESS: Martin Lyons or Frank Grady. I couldn't be sure because somebody handed it to me and said "Jack, that's the paper. Anybody ask you any questions, you transferred it."

RHE COURT: Whichever one handed it to you you say the other one was present?

THE WITNESS: Both of them were present.

THE COURT: Objection overruled.

MR. DURKAN: I respectfully except.

THE COURT: You have a general exception to all rulings and the same goes to Mr. Bruce.

(Government Exhibit 10 is received in

evidence.)

MR. BRUCE: May I inquire, your Honor?

THE COURT: Certainly.

VOIR DIRE EXAMINATION

BY MR. BRUCE:

Q At the time that Government Exhibit 10 was given to you, was Mr. Jankowski present?

A No.

Q Did you ever have any conversation with Mr. Jankowski regarding Government Exhibit 10?

A No.

Q To your knowledge, sir, did Mr. Janko[illegible]know anything about Government Exhibit 10?

A Not as far as I can recall, no.

Q To your knowledge, sir. Answer the question, yes or no.

A No.

Q So far as you know Mr. Jankowski was not connected with that which is marked Government Exhibit 10, is that correct?

MR. CAREY: Objection.

THE COURT: I will sustain the objection to that last question.

I will take it subject to connection as to your

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client, Mr. Bruce.

Q Now, when that which is marked Exhibit 10 was given to you, there were several people around you; is that correct?

A That's correct.

Q And some of these people that you mentioned were who?

MR. CAREY: I object. It has been asked and answered twice.

THE COURT: It has been. I don't think this is voire dire now. It has been established that Mr. Jankowski was not there.

MR. BRUCE: I have no further questions.

BY MR. CAREY:

Q Mr. O'Brien, I direct your attention to Government Exhibit 10. Did you complete the date which appears on the second line?

A No.

Q Did you complete the serial numbers which appear in two places on the one on the third line.

A Just my two names.

Q Did you complete the second written by hand on the third line from the bottom which says "Patrick Armstrong, 2878 Valentine Avenue."

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A No. Just my two names.

Q At the time you received this document did you know whether or not those serial numbers corresponded with the serial numbers on the document where you had signed your name at J & J?

A No, sir. I never seen no serial numbers at all.

Q Can you tell the jury who Patrick Armstrong is?

A No idea.

Q Did either Martin Lyons or Frank Grady tell you who Patrick Armstrong was?

A No. I was just supposed to have transferred that to him.

Q Did you ever talk to Frank Grady again about the weapons you signed for after the occasion which you were handed the receipt marked Government Exhibit 10?

A I met him about two years ago, St. Patrick's Day down on 27th Street.

Q And who, if anyone else, was present at that time?

A Frank was in a bar, St. Patrick's night, him and his wife, a few other people. I didn't know them.

Q What, if anything, did you say to Frank Grady and what, if anything, did he say to you on that occasion?

MR. DURKAN: I object to it.

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THE COURT: Mr. Bruce,you have an objection, don't you?

MR. BRUCE: I do, your Honor.

THE COURT: Mr.Bruce's objection is sustained and the jury cannot consider this discussion as having anything to do with the case against Mr. Jankowski.

Mr. Grady's objection is overruled.

Proceed.

Two years ago,you said?

THE WITNESS: Yes. We met at a tavern. He said "Things are getting hot."

He says "Anybody comes around and bothers you, call this number."

He gave me a card with a law firm of O'Dwyer & Bernstein.

Q Was anything else said by you or Frank Grady at that time?

A No. I couldn't recall any because I was pretty well lit up that night.

MR. CAREY: I have no further questions of this witness, your Honor.

THE COURT: Mr. Durkan?

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CROSS EXAMINATION

BY MR. DURKAN:

Q You didn't follow his advice, did you, and call O'Dwyer & Bernstein?

A I called them one time.

Q Can you tell us, sir, going back to the signature that you say you put in the book, can you tell when that was?

A It must have been the 6th of May. That's the date on the thing.

Q Well, forget about the date that's on it, do you yourself remember of your own memory and knowledge when it was that you signed the book in Jankowski's store?

A The early part of May, 1970.

Q And let me ask you this, Mr. O'Brien: You mentioned in answer to Mr. Carey's question that you had been having discussions with various people about the situation in Northern Ireland; is that correct?

A That's correct.

Q And this went on from the time that the trouble started back in 1968; is that right?

A I didn't become mixed up with this until I met Tom Duffy. That's about 19 -- early part of 1970, I guess.

Q Isn't it a fact that 1968 and '69 there was a lot

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of trouble going on over here?

A Yes. Since 800 years it is going on.

MR. CAREY: Objection, your Honor.

THE COURT: I will overrule the objection.

Q And this trouble in '68 and 1969 was a topic of conversation between you and your friends?

A Definitely.

Q And particularly those who felt strongly about the situation in Northern Ireland; isn't that so?

MR. CAREY: Objection. Beyond the scope of direct examination.

THE COURT: I don't know that it is. There has been some testimony that these matters were discussed on the direct testimony.

Q Isn't that a fact, sir?

A That's right.

Q And you spoke about it to Martin McCarthy on many occasions?

A Everybody that was there talked about it. We read it in the paper, seen it on television.

Q And that included Martin McCarthy, the man that went with you the day you signed your name?

A Yes.

Q That included, I believe you told us, Dennehy

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you spoke about it to Dennehy?

A Yes.

Q And he was upset about it, was he?

A Everybody that was with us putting on the shows were upset about it.

Q And the shows you were putting on were the shows that had to do with raising money to help out in some fashion b in Northern Island; is that right?

A Yes.

Q You yourself felt strongly, did you not, about what you considered to be a tragedy over there, did you not?

A I still do.

Q You still do?

A That's right.

Q And can you tell us, sir, when you began to feel strongly and when you began to feel upset about it, you engaged with Martin McCarthy and Tom Duffy in running plays and shows; is that right?

A Right.

Q And this occupied a considerable portion of your spare time. Is that right?

A No.

Q Well,you certainly didn't do it during working

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hours, is that true?

A I was mixed up with selling tickets and selling chance books.

Q Selling chance books and selling chance books?

A Tom was the head of all the shows. There was no leadership.

Q No leadership?

A No leadership.

THE COURT: Please don't repeat all his answers.

Q Every fellow was trying to help out as best he could; is that right?

A That's right.

Q And you were as much a leader as anybody else?

A Yes.

Q And you felt just as strongly as everybody else?

A Right.

Q Is that right, sir?

A That's right.

Q There came a day when a discussion came up about the fact that people were getting killed on the other side: is that right?

A That's right.

Q And you felt that --

MR. CAREY: I object. I haven't heard the answer.

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THE COURT: I thought he said yes.

Q There came a day when the suggestion came up that maybe they needed more than good wishes; is that correct?

A That's right.

Q You agreed with that proposition, did you not, sir?

A That's right, as long as it was legal.

Q As long as it was legal?

A That's right.

Q And this was also the topick of conversation among all the men; is that right?

A That's true.

Q Now we are coming in some time, you say, early 1970 that somebody approached you to sign your name in a book?

A That's right.

Q Is that right, sir?

A Yes.

Q You said that man was Grady or was it McCarthy or was it both?

A Both.

Q Did anybody else ask you to sign your name in a book?

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A No.

Q Just Grady and McCarthy?

A That's right.

Q And --

A Because they knew I was reluctant to sign and they come up to my job to try to strongarm me. Not to cause any trouble I went down and I signed.

Q They tried to strongarm you?

A That's right.

Q These were the fellows you were working with to raise money selling chances?

A They knew I didn't want nothing to do with it, as far as the guns were concerned I did want nothing to do with it.

Q Did you tell the U.S. Attorney up until this very minute at any time that anyone triedto strongarm you?

A I told him that.

Q Did you tell it to the grand jury that somebody tried to strongarm you?

MR. CAREY: No objection. No testimony he was asked that.

Q Did you testify --

MR. CAREY: My objection is still outstanding.

THE COURT: Sustained.

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Q Are you telling us, Mr. O'Brien, that you out of all of them, you were the one that they had to strong-arm?

MR. CAREY: Objection, your Honor. No testimony to that effect.

THE COURT: He can ask that. I am not quite sure what you mean by strongarm.

THE WITNESS: Strong talk. "Jack, we all signed. We want you to come down to sign. It is legal. You won't get in no trouble."

THE COURT: Are you talking in terms of physical violence?

THE WITNESS: No, just strong talk.

THE COURT: You are bigger than he was, weren't you?

THE WITNESS: I was working at the time. I didn't want to cause no commotion; understand?

Q Mr. O'Brien, is it strongarm or strong talk, which is it?

A Stront talk.

Q Strong talk?

A Yes.

Q And the strong talk was something to the effect "Joh, how about you, will you sign?"

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A No.

Q Nothing like that?

A I said no, I will not sign.

Q Mr. O'Brien, it wasn't too much strong talk needed to get you to sign, was there?

A They convinced me it was legal.

Q How much did it take to convince you it was legal?

A After about 20 minutes, half hour talking.

Q 20 minutes or half hour talking?

THE COURT: Please don't keep repeating his answers. This prolongs the trial.

Q Mr. O'Brien, after 20 minutes or a half hour was that the first time they ever approached you, when you agreed after 20 minutes or a half hour to sign the book?

A Yes.

Q And it was your understanding, sir, that you were going to sign the book to show receipt for a rifle or rifles; is that correct,sir?

A That's right.

Q And you agreed, did you not, that you would do it?

A Right.

Q And you, sir, became part and parcel with

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McCarthy and Dennehy and everybody else at that time to go sign the book; is that right?

A That's right.

Q and, sir, the day that you went into Jankowski's store to sign the book, you knew what you were doing, did you not?

A I did.

Q And you knew that you were signing a book to show receipt of a rifle?

A That's true.

Q Is that right, sir?

A Yes.

Q The man into whose store you went is the man that you have been working alongside for 20 years, Jankowski?

A I don't know, right.

Q Isn't that right, sir?

A Yes.

Q As a matter of fact, you were the man that said that I am no the man that knows Jankowski?

A Right.

Q So that on this particular day you say it was early May of 1970, where arrriving at the store, Jankowski's store, the man you know so well, and you were coming in to sign the book?

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A Yes.

Q And you knew what you were signing for?

A Right.

Q You knew that Jankowski recognized you as a purchaser, did he not?

MR. CAREY: Objection, your Honor.

THE COURT: Well, I will sustain the objection as to what he knew.

Q Mr. O'Brien, at the top of the page where you signed your name it says customer's name; is that right, sir?

A Yes.

Q And were you the customer?

MR. CAREY: Objection, your Honor.

THE COURT: He may be asked whether he intended to sign as a customer.

Q Isn't that so, Mr. O'Brien?

A No, I was no customer. I didn't buy nothing. I just signed the book.

Q You knew what was going on, didn't you?

A Definitely.

Q Of course you did. And you went in and you didn't have any hestiation at all about taking your pen and signing your name as a customer for the purchase of serial No. 169173; is that right, sir?

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A Because I was convinced it was legal. I would not get in no trouble, I'd have a transfer paper. I says "All right, I will sign."

Q You were convinced it was legal?

A Yes.

Q You went in, sir, convinced it was legal and you presented yourself to Jankowski as the purchaser of the weapons?

A And John said "Anybody wants to buy guns, he has to sign their name."

Q You wanted to buy a gun --

A I didn't buy a gun.

Q You wanted the gun to be sold; is that right?

A I didn't hear that.

Q You wanted the gun to be sold?

A I don't know who bought them. I didn't buy them. I signed my name.

Q When you picked up a pen to sign your name you wanted that to be an action which would help in the transfer of ownership of that gun from Jankowski; is that right?

MR. CAREY: Objection, your Honor.

THE COURT: Overruled. He may be asked as to his intentions.

Q Is that so, Mr. O'Brien?

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A It must be, yes.

Q Of course it was.

THE COURT: You don't have to punctuate the man's answers. The jury hears his answers.

Q So you signed your name, sir, once and then you signed it again?

A Right.

Q And Mc Carthy was with you?

A Martin McCarthy.

Q When you went into the store who was in the store besides you and Mr. McCarthy?

A That's all, Jankowski, McCarthy and myself.

Q You walked in and what did you say to Jankowski?

A Come in to sign the book.

Q You come in to sign the book?

A Yes.

Q Had you seen the book before that?

A No.

Q Youhad never seen the book before that?

A Never. Don't know the first thing about guns, purchasing guns, firing guns or anything.

Q You were able to tell us the minute you saw the signature that that was a Federal Firearms Record.

A It was written right on top.

Q You saw that day?

A I didn't pay no attention. I wanted to get in, sign the book and get out. Back to my job. I was told to sign there, I signed there, I signed there and back to my job.

Q And McCarthy was standing alongside you. Did he have to urge you?

A Martin signed first.

Q Martin signed first?

A Yes.

THE COURT: Please don't keep repeating the answers.

Q What did Martin do, did he pick some random spot on the page?

A He must have.

Q Any old place at all?

A I think he was told where to sign.

Q By whom?

A What?

Q Who told him where to sign?

A John.

Q You think or you know?

A He must have been told.

Q Mr. O'Brien, we are not here for the jury to hear what must have beentold. Two defendants are here on

trial --

MR. CAREY: Objection, your Honor.

THE COURT: I will sustain the objection.

Q Mr. O'Brien, did McCarthy sign his name without anybody telling him?

A Martin McCarthy signed the book twice.

Q He signed it twice?

A Right.

THE COURT: I wish you wouldn't do that. If you are going to keep doing that I am going to have to call a halt to this.

MR. DURKAN: It is reflect, your Honor.

THE COURT: It just extends the record.

MR. DURKAN: I will try to control it.

Q Mr. O'Brien, which of you signed first, McCarthy or you?

A McCarthy signed first.

Q And did he sign once or twice?

A He signed twice. I was to the right of him when he was signing and I seen him sign.

Q Do you know, sir, was this on the same day?

A The same day.

Q Do you know or can you give us any clues as to, first of all, what day of the week it was?

A No idea whatsoever.

Q Do you even know what year it was?

A 1970, early part of May.

Q Other than the fact that the exhibit carries 1970 on it, is there anything else that refreshes your recollection that this happened in May of 170?

A Because I went to Ireland that month and I signed before I went. I went to Ireland about two weeks after, on vacation.

Q You went to Ireland right after this?

A About two weeks after, right. I have been over 11 times in the last 13 years, since '63.

Q You didn't happen to have the gun with you when you went, did you?

A No, none whatsoever.

Q Now, Mr. O'Brien, when Mr. McCarthy signed on the day you were there, you are sure that he signed twice?

A Positively. He signed twice before me. Then I signed back to back.

Q And he signed before you?

A Yes.

Q Did he sign above you on the page?

A I didn't see where he signed. I seen him sign, sign and then I was told to sign and I signed twice and I walk

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out. He signed his name twice.

Q Mr. O'Brien, did you ever go back a second time with Mr. McCarthy?

A No.

Q Are you sure?

A Positive.

Q Well, Mr. O'Brien, on this particular exhibit which the government has put in, which is the blow up of the page, Exhibit 9-A, with the Court's permission --

THECOURT: Yes,he may see it.

Q Mr. O'Brien, will you look and show us there where you say Mr. McCarthy signed twice on the same day?

A Let me see. Right there.

Q What date is on there,sir?

A May 6th. And May 8th.

Q May 8th?

A Right.

Q So, Mr. O'Brien, let me ask you again --

A But the dates were not put in when you signed.

Q The dates were not put in?

A That's right. I told you that before. I just signed my name.

Q Do you know who put the dates in?

A No idea.

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Q No idea who put in the dates?

A No.

Q Sir, now, Mr. O'Brien, on the first day when you had the first 20 minute or half hour conversation, you may have told us but I wish you would do so again, how many people were present, the 20 minute or half hour conversation during which you agreed finally to sign your name?

A Grady and McCarthy and myself.

Q Grady, McCarthy and yourself?

Q Yes.

Q And when was that, sir?

A That was in the afternoon,about 2, 2:30.

Q And when was it, sir, in relation to the time you went and signed your name in J & J?

A About a half hour after that.

Q In other words, in a half hourthey convinced you and one-half hour later you were in signing your name for a gun that you never saw?

A They assured me that nothing will happen. I came --

THE COURT: He answered the question.

Q Are you telling this Court and jury that in 20 minutes or a halfhour McCarthy and Grady convinced you to sign the book?

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THE COURT: I think he did tell us that, didn't he?

THE WITNESS: I answered that question before.

Q Then one half hour later you went into the store, John Jankowski's store, and signed the book; is that right?

A That's right.

Q And is it your testimony, sir, that that was the first time that you had ever been approached in terms of signing a book or doing anything with respect to guns?

A No. I told you, I brought Martin in to talk to John and John said that everything has to be legal.

Q You brought Martin in to talk to John?

A Martin Lyons, yes. I told you that before.

Q You were the one that started it all going, is that right?

A I told you, I knew nothing about the legality of it. I was assured it was legal. John said "Jack, anybody that buys guns has to sign his name. It is legal. You are allowed two guns."

So I figured what harm is that?

Q Mr. O'Brien, the first that anybody had to do with the J & J Bait Shop in purchasing guns was you going in with Martin Mc Carthy or Lyons; is that correct?

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A Yes.

Q Now, sir, before May 6th of 1970, how far before that day, in either weeks, months or years, did you first go into Jankowski's shop to make the first introduction between McCarthy and Jankowski?

A Lyons.

Q Lyons, all right.

A I'd say a week.

Q A week before that?

A Yes.

Q And how long did you spend in the store?

THE COURT: How much longer are you going to be with this witness?

MR. DURKAN: Not much longer.

A Three or four minutes because I brought Martin Lyons in. I said "John, this is Martin Lyons. He would like to buy some rifles."

Then I went out.

MR. DURKAN: I consider actually that I will be quite a bit in terms of time.

THE COURT: I will have to resume tomorrow then.

10 o'clock tomorrow morning.

Will you return, Mr. O'Brien, then.

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Members of the jury, don't discuss the case. Don't speak to anybody, don't visit any scenes mentioned in the testimony and I will see you all at 10 o'clock tomorrow morning.

You may now withdraw from the courtroom.

(Jury leaves the courtroom.)

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JOHN J. O'BRIEN, resumed.

THE COURT: Good morning, members of the jury. I would like to ask all of you, and I certainly mean no criticism, to please try to be on time for whatever time is scheduled in the morning. Because if you are not on time, sme calendar matter will not be on time. It is in the interest of all of us to proceed as promptly as we can with this trial.

So please, in the future try to get here by the appointed hour, if you can.

You may resume, Mr. Durkan.

CROSS EXAMINATION (Continued)

BY MR. DURKAN:

Q Mr. O'Brien, yesterday afternoon --

THE COURT: None of that. Just frame the question. No summation until the end of the trial. We all know what you were doing yesterday afternoon, so just go right into a question.

Q Mr. O'Brien, the agreement that you mentioned whereby the group of people would -- where the group agreed that weapons would be purchased, would you tell me again, sir, was Martin McCarthy a member of that group prior to the signing of the names in the book?

A It was no group. Just that we were doing

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Tom Duffy a favor of doing shows. No organized group at all. Martin was with us.

Q I am not talking about the shows, Mr. O'Brien. I am talking about when the agreement was reached among the group of men concerned here to sign for the purchase of weapons, was Martin McCarthy a member of that group who would come and sign?

A No, Frank Grady brought him up to sign.

Q But was McCarthy a member of the group?

A NOt with the shows. Frank Grady brought him up to sign.

Q Met me rephrase it, Mr. O'Brien. When it was agreed that the book would be signed a number of men were involved in the agreement to sign; is that correct?

A Frank Grady approached me, McCarthy approached me to sign the book.

Q Now, in addition to you and McCarthy and Grady there were others, were there not? John Casey was part of it?

MR.CAREY: I will object to it. Others who did what. I dont understand the question.

THE WITNESS: I did not see anybody else sign. Just McCarthy and myself.

Q I am not asking you who you saw sign. I am

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asking you, if you will, to name, as best you can, the men -- I believe you named them yesterday but I want to make sure I have them all -- the men who were part of the group who would go and sign for the guns at various times? Not whom you say signed but the men who agreed to sign.

A I didn't know anybody who agreed to sign. We talked about it but nobody came out and agreed. I didn't agree to sign until they came up to get me.

Q When you talked about it --

A What the others did about agreeing to sign, I have no idea.

Q Mr. O'Brien, when you say we all talked about it, tell us the names of the people who talked about it?

THE COURT: Who talked about signing for guns?

MR. DURKAN: Who talked about signing for guns.

A Martin Lyons, Frank, myself, Dennehy --

Q Well --

THE COURT: You asked him for the names. So don't interrupt the man.

A John Casey.

Q What is Dennehy's first name?

THE COURT: Just a moment. You asked this man a question. Let him answer the question.

MR. DURKAN: I want to make sure --

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THE COURT: You asked him for the question. He will be permitted to answer it before he is interrupted unless you want to withdraw the question. You see, he startes to give you a list of names. Right away you want to interrupt him to get somebody's first name. You can come back for that.

Please give the attorney the list of the names.

THE WITNESS: Martin Lyons, Frank Grady, myself, Billy Dennehy, John Casey, Martin McCarthy -- I am not sure about McCarthy being there but he was brought up that day for me to sign any way. There might be a few others I can't recall. It's been six years ago.

Q Now, sir, you went there the day that Martin McCarthy signed?

A Right.

THE COURT: He told us that yesterday. Let us get into new material or drop it.

Q Were you there the day John Casey signed?

A No.

Q Did you go with John Casey?

A No.

Q Were you there the day William Dennehy signed?

A No.

Q Did you go with Dennehy?

A No.

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Q Do you know a fellow named Jack Horrigan?

A No. Heard the name but I never knew him personally. Martin McCarthy and I -- the only ones I seen sign was Martin McCarthy and myself.

Q Could you tell us, Mr. O'Brien, before the date of signing approximately, if you can, how many times you and these names that you mentioned discussed this plan for signing for the guns?

A Only the once, as far as I know. It was down in some tavern. I think it was on Main Street maybe. The Getty House or Favin's.

Q And was this a topic of conversation at just one meeting?

A As far as I can recall, yes. This is six years ago. I am trying to refresh my memory with this stuff, you know.

Q Sir, when you agreed to sign, when you went to sign, you signed your true name, did you not?

A John J. O'Brien, right.

Q And you gave your true address, did you not?

THE COURT: Didn't we get this yesterday? I am not going to have repetitious cross examination.

MR. DURKAN: It isn't repetitious, your Honor.

THE COURT: It is. Yesterday this witness

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testified that it was his true full name and that's where he lived. I remember it well. I am sure the jury must remember it.

You told us that yesterday, didn't you, that that's your true name?

THE WINTESS: Yes.

THE COURT: And that's your proper address?

THE WITNESS: Yes. I still live there.

THE COURT: Let's take new material or nothing.

Q Did you give anything else, sir, to establish your true identity?

A No.

Q To your knowledge, sir, did McCarthy give his true address?

A As far as I know. I knew his name was Martin. I didn't see him in quite a while. Where he lived I don't know. I see Marty at one or two meetings, but where he lived I never asked because I didn't see him for years prior to this.

Q To your knowledge, sir, did he attempt to hide his true identification?

A No.

MR. CAREY: Objection.

THE COURT: It's been answered. I will let the

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answer stand.

MR. DURKAN: That's all, your Honor.

THE COURT: Do you have anything more from this witness that hasn't been covered?

MR. BRUCE: Yes, your Honor.

THE COURT: You may cross examine.

CROSS EXAMINATION

BY MR. BRUCE:

Q Mr. O'Brien, you testified --

THE COURT: I won't take that type of question. The jury heard all the testimony. They know exactly what the man testified to. Just go right into the question in a simple declarative form.

MR. BRUCE: Thank you, your Honor.

Q Mr. O'Brien, you knew John Jankowski for 20 years; is that correct?

A No, wrong.

Q How long did you know him?

A As long as I am on the job, I guess. 16-1/2 years.

Q And your place of employment was right behind his store; is that so?

A Up the street about five, six stores.

Q In the vicinity?

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A Yes.

Q And during the time of the 16 years that you knew John Jankowski did you ever have occasion to go into that store?

A Yes. buy lottery tickets.

Q And you knew John Jankowski pretty well; is that so?

A That's right.

Q You also knew that he had been a victim of a concentration camp?

A That's right. We used to discuss it.

Q You knew he had scars on his body as a victim of totalitarianism?

MR. CAREY: Objection.

THE COURT: We heard all of this yesterday. It is repetitious. The jury heard it. They haven't forgotten it, Mr. Bruce. Let's not have a lot of repetitious material in this trial.

I will sustain the objection solely on the ground of repetitiousness.

Q Now, Mr. O'Brien, did you know the pattern of living that John Jankowski had at the time?

MR. CAREY: Objection.

THE COURT: He can answer it yes or no.

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A No.

Q He has a small store; is that correct?

A You mean in the concentration camp you are talking about?

THE COURT: No.

Q On Yonkers Avenue he has a small store?

A Yes, before the store he has now.

Q And he lives upstairs with his family; is that correct?

A Yes.

Q And you knew John Jankowski to be a simple law abiding man, did you not?

A Absolutely.

Q Making a living; right?

A Right.

Q Now, at the time that you recommended this man to your friends --

A It was an introduction.

THE COURT: Please let the attorney finish the question.

THE WITNESS: Excuse me.

Q Did you take those people into the store and introduce them to Mr. Jankowski?

A Only Martin Lyons.

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Q Only Martin Lyons?

A As far as I can recall, right.

Q Now, you had discussed the purchasing of guns to be sent overseas with these people: is that correct?

A Yes.

Q To help?

A Definitely.

Q And at the time thatyou had this discussion you were a member of the Chippawa Club, were you not?

A That's a political organization, right. Nothing to do with this.

THE COURT: He told us yesterday it was the 6th Ward Democratic Club.

That's Mr. Brogan's club, isn't it?

THE WITNESS: Yes. He died about six years ago.

THE COURT: You may resume.

Q How many men were members of this club?

THE COURT: You are talking about the Chippawa Club?

A Every city employee belonged to the Chippawa Club.

Q Including these men that you had mentioned, Grady, Lyons, and so forth?

A I don't know whether Frank Grady was a member, but he taught fife and drum corps. Whether he was a member of the club I have no idea. But the club had nothing to do with this at all.

Q But these men were aware of this Chippawa Club, were they not?

A Frank Grady brought us up there. He had the keys to the place.

Q And you, Mr. O'Brien, at that time you were running benefits for Irish relief, were you not?

A I was helping.

Q You were helping?

A Right.

Q Now, did you or did you not, when you first broached the subject of guns to Mr. Jankowski, did you not tell him that the boys at the club want some guns?

A No.

Q What did you tell him?

A Absolutely not. Nothing about the boys in the club because there was no boys in the club. There was no club.

Q Did you tell them that somebody wanted guns?

A I said on account of the trouble in Ireland at the time.

Q I am asking --

A I am trying to answer it.

THE COURT: You asked the question.

A John says, "I understand what is going on over there, it is terrible, what the British are doing to the people in the six counties."

He said "Every gun purchased in my store has to be signed for."

I don't know the first thing about guns. I still don't know.

THE COURT: What did he tell you is what you are being asked or what did you tell him?

THE WITNESS: I said, "John, how would we go about buying guns"?

He said, "You are allowed two guns and everybody that purchases two guns would have to sign for them." That's all I know.

Q That's all that was said?

A As far as I know, yes.

Q To your knowledge, Mr. O'Brien, Mr. Jankowski was never a party to any agreement or communication or talk that involved sending guns to Ireland; is that correct?

A No, he had nothing to do with that as far as

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I know.

Q Now, did you give certain testimony before a grand jury on the 28th of February, 1975, if you remember?

A Right.

Q And do you remember this question being put to you --

MR. CAREY: Which page is that, Mr. Bruce?

MR. BRUCE: Page 2, in the middle of the page.

"Q Did you tell Mr. Jankowski anything about why you were signing for those weapons?"

Did you make this answer in response thereto --

MR. CAREY: Mr. Bruce, what is the reference in the top left corner of that page?

MR. BRUCE: JJP-2.

"A I figured he knew."

Do you remember making that answer?

A He did know because there was no questions asked. I went in and signed and there was no questions asked.

Q Answer the question. Did you make that answer, yes or no?

A Yes.

Q You did make that answer?

A Yes.

Q So at that time when that question was put to you you figured that he knew why you were there signing with Mr. McCarthy?

A Right.

Q You figured but you really didn't know, did you?

A Of course I knew.

Q You figured that you knew?

A That's the way I put it in the thing. I mean --

Q Mr. O'Brien, please answer the question yes or no. Do you remember this question being put to you on the same day and time at the same proceeding:

"Q Did Mr. McCarthy tell Mr. Jankowski anything to explain why he was signing for those weapons?"

Do you remember making this answer:

"No, not as far as I know about. I guess he was told by Grady then."

Does that refresh your recollection, sir, as to whether Mr. Jankowski knew anything about this prior agreement to your knowledge?

A All I know is McCarthy went in and signed the book with me. Now, John put the book in front of us, we signed the book. That's all.

Q Now, that --

A This is almost six years ago. I can't recall

all this stuff. It is getting rusty now, sir.

Q Mr. O'Brien, you were frightened at the time when certain men came to your place of employment, and I think your word was strongarmed you to go down to Mr. Jankowski's place to sign this book.

A Strong talk.

Q You were frightened; is that so?

A Yes, because I was working at the time. I didn't want to cause no trouble.

Q Were you frightened, yes or no?

A Yes.

Q You were frightened because of your job; is that correct?

A Definitely.

Q Now, were you more frightened when you gave an affidavit on October 12, 1973, to the prosecutor's office?

MR. CAREY: Objection, your Honor.

THE COURT: Well, there is no showing that he was frightened at that time but he may be asked if he was frightened at that time.

A I was frightened every time they came near me.

Q You were frightened when you gave the affidavit to the United States Attorney, were you not?

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MR. CAREY: First of all, your Honor, the affidavit wasn't given to the United States Attorney.

THE COURT: I will sustain the objection if that be so. In the absence of a showing that he gave an affidavit.

Show him the affidavit.

Q I show you this, Mr. O'Brien, and ask you if you can identify this document.

THE COURT: Mark it for identification.

MR. CAREY: Your Honor, it has been marked 3510 for identification.

THE COURT: All right. Put a staple through it and then show it to the witness. That's a single document.

Take it off the jurh rail. You know better than that, Mr. Durkan. What kind of a thing is this?

MR. DURKAN: Your Honor, there was nothing meant. I put it down because it is not in order and for no other reason.

THE COURT: A jury rail is not place to sort papers.

MR. DURKAN: I am sorry, and I pologize to the jury.

THE COURT: Take your seat.

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Frame the next question, please, Mr. Bruce.

Q Mr. O'Brien, can you identify that as your signature, sir?

A Right.

Q Can you, sir?

A Right.

Q Is that the affidavit you executed on or about October 1973?

A Yes.

Q At that time, sir, was that the first contact that you had with the United States Attorney's office in reference to this matter?

A That's right.

Q And when you were called down there, sir, you were still employed --

MR. CAREY: Objection, your Honor. No foundation he was called down to the United States Attorney.

THE COURT: Where did you sign that affidavit?

THE WITNESS: On the second page.

THE COURT: I know, but where were you physically when you signed it?

THE WITNESS: In the place where I worked, the bathhouse.

Q You were employed at that time at the City of

Yonkers; is that correct?

A That's correct.

Q At the time that you executed that affidavit were any promises made to you as to what your future would be in reference to this case?

A Not a thing.

Q Were any threats made to you at that time?

A No.

Q Did you voluntarily offer that affidavit?

A I did.

Q But not until an agent came to your place of employment; is that correct?

A Sure. Shaking like a leaf.

Q Is that correct, Mr. O'Brien?

A Right.

Q At no timedid you ever volunteer that?

A No. They came to my place of employment.

Q They came to your place?

A Right.

Q How many of them came to your place?

A Two.

Q Did they call you and tell you they were coming?

A No.

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Q They just came in on your?

A Just walked in on me.

Q And, of course, you were frightened, having been frightened in May of 1970, you were more frightened now in October of 1973; is that correct, sir?

A That's right.

Q Now, have you ever been convicted of a crime?

A 31 years ago I was involved in a burglary.

MR. CAREY: Objection, your Honor.

THE COURT: Well, he's answered the question already. I will let the answer stand. The objection came too late.

How old are you, sir?

THE WITNESS: 49 now. I was a youthful offender at that time. Just the one time.

THE COURT: You were 18 years old?

THE WITNESS: 17 or 18. I forget the exact age.

THECOURT: Next question.

MR. BRUCE: If your Honor will just bear with me.

(Pause.)

THE WITNESS: I have a mistake down here.

THE COURT: Don't volunteer any information.

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Q Now, a lot of this activity took place at the Chippawa Club; is that correct, Mr. O'Brien?

A No.

Q Well, did there come a time when you met Mr. Frank Grady at the Chippawa Club?

A About twice maybe.

Q About twice. And you are absolutely sure there were no promises made to you by those agents when you gave that affidavit?

A None whatsoever.

Q And this was just voluntarily done?

A That's right. Out of fright, believe me.

Q Now, you are testifying here today and you testified before a grand jury on the 28th of February, '75. Were you frightened when you gave that testimony?

A Every time I come down here I am frightened.

Q You are frightened now?

A Definitely.

Q You are not physically frightened by it?

A What do you mean by that?

Q You are not afraid somebody is going to do something to you physically.

A Oh, no.

Q You are afraid you might lose your job?

A I lost that.

Q Are you afraid you might be arrested?

A Definitely.

Q Did that prompt you or motivate you to give that affidavit?

A One of the reasons, the main reason, right.

Q Is that also a reason why you sit there on that stand today testifying?

MR. CAREY: Objection.

THE COURT: If you are going to ask this kind of a question he is going to be permitted to give his answer. You are not to interrupt it. If the answer is non-responsive I will strike it out on motion and tell the jury to disregard it.

You can finish your last answer.

A I forgot the question.

THE COURT: Next question, please.

MR. BRUCE: I have no further questions for this witness.

THE COURT: Any redirect for Mr. O'Brien?

MR. CAREY: One moment, your Honor.

(Pause.)

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REDIRECT EXAMINATION

BY MR. CAREY:

Q You stated you were working with Mr. Duffy on a series of benefits; is that correct?

A Two. I was involved in two of them.

Q Was money raised as a result of the activities?

A Yes.

Q Was it a Mr. Duffy?

A Tom Duffy.

Q And do you know what happened with that money?

A No idea.

MR. CAREY: No further questions.

THE COURT: Do you play a musical instrument or what do you do in these benefits?

THE WITNESS: I was only like selling tickets and chance books, Judge. One was in Queens and one was in the Sacred Heart Church in Yonkers.

MR. DURKAN: No further questions.

THE COURT: You are excused, sir.

(Witness excused.)

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MR. CAREY: The government calls William Dennehy.

W I L L I A M E. D E N N E H Y, called as a witness on behalf of the government, having first been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. CAREY:

Q Mr . Dennehy, by whom are you employed?

A I'm employed by the United States government. I am a soldier.

Q And in what branch of the service are you serving?

A United States Army.

Q What is your rank?

A I'm a Specialist 5th Class.

Q What are your duties as a Specialist 5th Class?

MR. DURKAN: Objection, irrelevant.

THE COURT: Overruled.

Q What are your duties as a Specialist Fifth Class?

A I am a plumber.

THE COURT: A plumber?

THE WITNESS: Yes, sir.

Q Do you know a man named Frank Grady?

A Yes, I do.

Q Do you see him in this courtroom?

A Yes, I do.

Q Would you please indicate for the jury where you see him?

A The blue suit. He is sitting to the right of that gentleman with the brown suit.

MR. CAREY: May the record reflect the witness has identified the defendant Frank Grady.

THE COURT: The record may so indicate.

Q For how long have you known Frank Grady?

A I've known Frank since 1970.

Q Could you tell the jury when in 1970 you first met him?

A I met him around May of 1970.

Q Who, if anyone else, was present when you first met him?

A Let's see -- there was Mr. Grady, Mr. Luke Dalton, John Casey, Mr. Jack O'Brien --

THE COURT: Please speak up nice and loud.

THE WITNESS: Jack O'Brien and Mr. Martin McCarthy.

Q The individual that you know as Jack O'Brien,

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have you seen him in this courthouse before?

A Yes, sir.

Q Where have you seen him?

A He is in the witness room.

Q And did he testify, as far as you know, just before you?

A Yes, sir.

Q Where did you have that meeting.

A That was in my apartment on Ritters Lane in Yonkers, New York.

Q Tell the jury what, if anything, was said by the people who were present at that meeting.

THE COURT: Have we established who was present?

MR. CAREY: Yes, we have, your Honor.

A As they entered my apartment, I sat them down and I was introduced to Mr. Grady and everyone by Mr. Dalton. Mr. Grady is my cousin on my mother's side. He is a half cousin, and he started asking me how my sisters and my brothers wer, how my father was, and he started discussing, talking about the old country, Ireland, and he was mentioning how things were over there, how bad they were, the conditions, and if anything would I like to help in any way.

So I said "Certainly."

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So as we continued the conversation he said "Would you sign for some rifles?" And I said "Of course." And the conversation went from -- how can I put it? From Mr. Grady to Mr. Casey, nothing of importance.

Q Did you speak to Mr. Casey or Mr. O'Brien, did they say anything to you or did Frank Grady say anything to them about --

THE COURT: One question at a time, if you will, Mr. Carey.

Q Do you recall any conversation by Mr. O'Brien or Mr. Casey?

A No, not off hand.

Q Do you recall anything that Mr. Grady may have said to Mr. O'Brien or Mr. Casey?

A No.

Q Did there come a time when you did the favor that Frank Grady asked you to do?

MR. DURKAN: Objection to the form, your Honor.

THE COURT: Sustained.

Q Did there come a time when you signed for weapons?

A Yes.

Q Would you please tell the jury when that was?

A That was about a week to two weeks later, and I

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was picked up at my house. From there we went to J&J Bait Shop on Yonkers Avenue, Yonkers, New York.

Q Will you please tell the jury who picked you up and who went from your apartment to the J&J Bait Shop?

A There was myself, Mr. Grady and Mr. Dalton. From there we went to J&J Bait Shop.

Q Please speak up a little louder, Mr. Dennehy, so the people in the back of the courtroom can hear you.

What, if anything, was said or done after you arrived at the J&J Bait Shop?

A Well, to the best of my recollection we went inside and I was brought up to the counter --

MR. BRUCE: Can't hear the witness, your Honor. He's mumbling.

THE COURT: Please speak up, if you will.

A We went inside.

Q Would you please tell the jury who went inside?

A Myself, Mr. Dalton, Mr. Grady, Mr. Casey, Mr. O'Brien and Martin McCarthy. From there I signed for a rifle or a weapon.

Q Who else was in the store besides the men you have just mentioned?

A To the best of my knowledge, the owner of the store, Jankowski.

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Q Would you recognize Mr. Jankowski if you saw him again?

A Yes, I would.

Q Do you see him in this courtroom?

A Yes, sir.

Q Would you please indicate for the jury where you see him?

A He's to the left of the last gentleman on the end of the table.

Q How is he dressed?

A Light tan suit. I wouldn't know how to describe the tie. A multi-colored tie.

MR. CAREY: May the record reflect the witness identified the defendant Jankowski?

THE COURT: The record will so indicate.

Q Please tell the jury what people said, if anything, who were inside the J&J Bait Store, and what, if anything, those people did while you were in there.

A Well, I can remember what I did in particular, I walked up to the counter and Mr. Jankowski brought out a ledger or a book, I don't recall, and he said to put down -- he said that when you sign, put down your name, your address, your Social Security number and your date of birth.

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Q What, if anything, did you do as a result of that conversation?

A I did exactly as I was told.

Q What, if anything, did anyone else say at that time?

MR. BRUCE: I'm going to object to that as hearsay, your Honor.

THE COURT: Overruled.

As I understand it, Mr. Jankowski was in the store?

THE WITNESS: Yes, sir.

THE COURT: Overruled.

Q Do you recall anything that anyone else said at that time?

A No. Not off hand, no.

Q Did you see anything else done besides Mr. Jankowski handing you the book?

A There was money ha led over.

Q Please tell the jury who you saw handling that money?

A I saw Mr. Grady hand Mr. Jankowski money.

Q Could you tell the jury how much money, if you know, Mr. Grady gave to Mr. Jankowski?

A Around $150.

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Q Was there any conversation at that time by yourself, Mr. Grady or Mr. Jankowski concerning payment of money?

A Well, I said to Mr. Grady -- I'm getting ahead of myself. I said to Mr. Grady, I said, "That was very expensive to pay for a rifle like that."

Q What, if anything, did Mr. Grady say to you?

A He said, "Well, wehn they have you, they have you."

Q Could you speak up a little louder, please?

A "When there's nothing you can do about it, you have to pay the price."

Q Did Mr. Jankowski say anything at that time?

A No, sir.

Q What, if anything, did you do after y ou left the store?

A To the best of my knowledge -- well, let me see. When we got out of the store I received a piece of paper, and on that paper it had a blank for my name and the name of an individual, who I don't remember. The type of weapon that was bought, the serial number and that was it.

Q And how many weapons did you sign for while you were in the store?

A One.

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Q And what did this document that you were given indicate?

A It indicated the person who I supposedly had sold the weapon to.

Q And who gave you that document?

A Mr. Grady.

Q Did he say anything when he gave you that document?

A "This is in case anybody asks, if anybody asks you what happened to the weapon you bought, you show them this. This is to whom you sold it."

Q What, if anything, did you do after you received that document?

A I kept it for about six months; threw it out.

Q On the day you signed for the weapon after you left the store, did you have any more conversations with Frank Grady or any of the other people who were in the store?

A Yes, but I don't know off hand what I said.

Q When you went into the store, did Mr. Jankowski ever ask you why you were there?

A No.

Q Did you pay Mr. Jankowski any money?

A No.

Q Did Mr. Jankowski ever ask you to pay him any

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money?

A No.

Q Did you ever see the weapon which you signed for?

A No.

Q Did Mr. Jankowski ever tell you that you could see the weapon that you signed for?

A No.

Q Did you tell that they could receive the weapon which you signed for?

A No.

Q Did you ask anyone else to pay for the weapon on which you signed for?

A No.

Q Did you ever go to J&J Bait Shop a second time to sign for a weapon?

A Yes.

Q When was that?

A That was approximately two months later.

Q And who, if anyone else, was present at that time?

A Myself and Mr. Grady and I don't remember who was actually in the store. I don't remember who it was at this time in the store.

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Q Was there a person in the store who appeared to be working for the store?

A Yes.

MR. BRUCE: Objection.

THE COURT: Sustained. I'll strike it out.

Q Who was this person that you say -- I'm sorry, your Honor.

THE COURT: The jury will disregard the last answer.

Q You say there was a person in the store that you don't now remember?

A Correct.

Q Was that a person who would enter the store with you and Mr. Grady?

A No.

THE COURT: You see, if the person was behind the counter he can tell us that but he cannot tell us whether the person appeared to be in charge of the store. That's a question for the jury.

Where was this person?

THE WITNESS: Behind the counter.

THE COURT: Let's go on.

Q What, if anything, was said and done on that occasion by the people who were present?

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MR. BRUCE: Objection.

THE COURT: Overruled. I will take it subject to connection as to Mr. Jankowski.

Q Please answer the question.

A Nothing else was actually said because I knew what to do the second time. I knew how to sign the book.

Q What, if anything, did you do?

A I signed my name, my date of birth, my Social Security number and my address.

THE COURT: Where was the book when you did this? When you went in the store where was the book?

THE WITNESS: On the counter.

THE COURT: When you walked in the door, it was on the counter?

THE WITNESS: I'm sorry, it was put on the counter.

THE COURT: Did you ask for the book?

THE WITNESS: No, sir.

THE COURT: Who put the book on the counter?

THE WITNESS: The gentleman behind the counter.

THE COURT: Without you asking for the book?

THE WITNESS: I don't remember actually what transpired.

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Q What, if anything, did Mr. Grady say while you were in the store?

A I couldn't recall what I said.

Q After you signed for the weapon, did anything else happen while you were in the store?

A I don't remember if anything did happen.

Q Did Mr. Grady ever give you anything?

A Yes. I received a second piece of paper, the same type of which I described before, about the selling -- let me get it straight.

The paper which had to do with me selling this weapon to someone else.

Q Was that paper like the first one which you just described for the jury?

A Yes.

Q And where did you get that piece of paper?

A Mr. Grady.

Q And when did you get that piece of paper?

A As we left the store.

Q Did Mr. Grady say anything to you at the time he gave you that piece of paper?

A No, not that I recall.

Q What, if anything, did you do with that piece of paper?

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A I held onto that for the same period of time. About six months.

Q Then what happened?

A Threw it out.

Q While you were in the store on the second occasion, did you pay any money to the man behind the counter?

A No.

Q The man behind the counter asked you to pay him any money?

A No, he did not.

Q Did Mr. Grady pay the man any money?

A I don't recall if he did.

Q Did you authorize Mr. Grady to receive the weapon which you signed for?

A No.

Q Did you ever see the weapon which you signed for?

A No.

Q On either occasion, when you were in the store, did you make any mental or written note of the serial number of the weapon which you signed for?

A No, I didn't.

Q Did you ever talk to Mr. Grady after you signed

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for the two weapons about what happened with the weapons?

A Yes.

Q When did you speak to him?

A Oh, that was probably before I even signed for the weapons. That was before I even signed for the weapons.

Q What did Mr. Grady tell you at that time, if anything?

A They said they were going to Ireland

MR. BRUCE: I am going to object to that and move it be stricken.

THE COURT: I will take it subject to connection.

MR. DURKAN: I join in that objection.

THE COURT: Overruled as to your objection, Mr. Durkan. I will take it subject to connection as far as Mr. Bruce's client is concerned.

I understand it, Mr. Jankowski was not present when you had this conversation, is that correct?

THE WITNESS: Which conversation, your Honor?

THE COURT: The one you just told us about, the guns going to Ireland?

THE WITNESS: Right.

Q Did you ever belong to any organizations which were related to Ireland?

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A Yes, the Irish Northern Aid Committee.

Q Which particular branch of the Irish Northern Aid Committee?

A That was just the name of o[illegible] -- how can I put it?

Q Is that committee divided into different chapters?

A I truthfully don't know. I don't know whether it is or isn't.

Q Did you have any position on that committee?

A I was the treasurer.

Q And who, if anyone, were the officers of that committee?

A To the best of my recollection, John Casey, Mr. Grady, and that's it. That's all I know.

Q What was Mr. Grady's position?

A Presid[illegible]nt, I guess.

Q What was Mr. CAsey's position?

A I believe he was the secretary.

Q When did you join that organization?

A 1970.

Q Approximately when in 1970?

A Around August of '70.

Q How did you come to join that organization --

MR. DURKAN: I object to it.

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THE COURT: Sustained. He joined it voluntarily. Let's go on to something else.

Q Were you asked by anyone to join that organization?

MR. DURKAN: Objection.

THE COURT: He can answer that question yes or no if he was asked to join.

A Yes.

Q Who asked you?

A Mr. Grady.

Q Did you ever have any other discussions with Mr. Grady about the two weapons which you had signed for?

A No.

Q Did there ever come a time when you were aware that tere was an investigation being conducted with respect to these weapons?

A Yes.

Q Did you ever have any discussions with Mr. Grady about that investigation?

MR. DURKAN: I object to this line, your Honor.

THE COURT: I will hear you at the side bar, gentlemen.

(At the side bar.)

THE COURT: What is proposed to be shown?

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MR. CAREY: Your Honor, the witness will answer in response to the question that he had a discussion with Mr. Grady, at which Mr. Grady told him if he is ever questioned about the firearms for which he had signed, that he should keep his mouth shut.

THE COURT: You see, the answer I took yesterday I don't think was relevant. I didn't realize where the answer was going yesterday when he simply gave him the name of a law firm, O'Brien that is. This may be admissible solely as to Grady, but anymore about giving him the name of the lawyer, I don't think I would take. If he really said what you say he said that I would take and it is not binding on Jankowski.

MR. DURKAN: May I be heard?

THE COURT: I thought it was going to be the same answer as yesterday and I would not take it.

MR. DURKAN: I think we are getting into the realm of Count number 20. Maybe I'm wrong. I think that's what it's leading up to, from what I can gather from the 3500 material. We are getting into the count that was stricken.

THE COURT: I think that some elements of the count that was stricken may have probative force as against the person making the statements because it may be evidence

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of consciousness of guilt. That is the only way I would take it. But as far as sending a man to an attorney, there is nothing wrong with that. I would not have taken the answer as to O'Brien except I really didn't know what was coming.

MR. DURKAN: The terminology "Keep your mouth shut" could be interpreted by the jury as constituting what in fact caused the indictment in the first place. It depends on how you say it. I think in this instance to permit that answer is to lead in the very count that you have already stricken.

THE COURT: Making such a statement to a material witness might be considered by the jury as independent evidence of consciousness of guilt by the person making it. That would be the only basis for admitting it. If that's really what the answer is, I will take it. But as far as yesterday's answer with respect to O'Brien is concerned, that is not relevant and doesn't bring out anything moreabout that, Mr. Carey.

MR. CAREY: I want the record to note, your Honor, that in each of these cases where the witness can remember the name of the attorney, it was O'Dwyer & Bernstein, I will instruct them --

THE COURT: Even so, telling a person that things

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are getting hot and if you need an attorney, go see so and so. I don't think that has any evidentiary value. I don't consider that in --

MR. CAREY: It does, to the extent it tends to corroborate one witness by showing that in fact they were each told the same thing.

THE COURT: I don't believe that has any probative force. But a statement to a witness which is susceptible of an interpretation that it shows consciousness of guilt, I would take. But as far as telling a person that things are getting hot and you will probably need a lawyer, and you should go to the law firm of X &Y, I would not take that.

MR. HOLMAN: I think those two instructions by Mr. Grady are linked and cannot be separated. If your Honor is going to rule that "Keep your mouth shut" can go to a lawyer --

THE COURT: That's different.

MR. HOLMAN: "Keep your mouth shut" alone, but "Keep your mouth shut and go to a lawyer," I think that the constitutional right here would be to give that kind of advice.

THE COURT: I will adhere to my ruling but accept that it be brought out by cross examination I would not take

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any evidence that he advised him to go see an attorney, because I think that's equivocal.

(In open court.)

MR. CAREY: Would you please read back the last question?

(Question read.)

Q Please answer the question.

A Yes, I did.

Q When did you have that discussion?

A Approximately I don't recall when, but I know I did.

Q Do you recall the year when you had that discussion?

A 1973.

Q Do you recall which part of the year you had that discussion?

A Approximately August.

Q Who, if anyone else, was present when you had that discussion?

A There was myself, Mr. Grady and Mr. Dalton.

Q Would you please tell the jury what Mr. Grady said at that time?

A He said, "If we get picked up, don't talk because we have a lawyer."

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MR. BRUCE: Again, I'm going to object.

THE COURT: As far as your objection is concerned, I will sustain it. I instruct the jury that Mr. Jankowski was not present at the time and you cannot consider that conversation in any respect insofar as concerns Mr. Jankowski's case.

MR. DURKAN: May I also have an instruction to the jury along the lines of what we discussed at the side bar?

THE COURT: I would intend to give that in the course of my instructions later on.

I would say to you that a person has a perfectly legitimate right to advise somebody else who may be in trouble to go see an attorney, and he has a right to recommend an attorney.

As far as the balance of the answer is concerned, I will take that up at the close of the case.

Q Mr. Dennehy, I show you Government's Exhibit 9 in evidence. I direct your attention to page 8 and page 9. Can you identify this exhibit?

A Yes, I can.

Q How can you identify it?

A This is the book I signed in J&J.

Q How can you identify it?

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Q I direct your attention to pages 10 and 11 of the same document. Can you identify that?

A Yes, I can.

Q How can you identify it?

A I see my name on it.

Q What is it?

A William E. Dennehy, 15 Walburton Avenue.

Q What is the document you are looking at?

A This is Federal Firearms record.

Q Is this the document you signed at Mr. Jankowski's the second time?

A Yes, it is.

Q Mr. Dennehy, this is Government's Exhibit 9A; is it a complete and accurate enlargement of Government's Exhibit 9?

A Yes, it is.

Q Will you please show the jury where your name appears on Government's Exhibit 9A?

A Here (indicating).

MR. CAREY: Indicating the line.

Q Which portion of that line, from the left to the right, did you yourself complete?

A I completed to the right of the date, this whole line here (indicating).

Q Did you place the date in there yourself?

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A No, I did not

Q Was the date in there when you signed?

A I don't really remember.

Q Is it on the information, the date above your name, is that your birth date?

A Yes, that's my birth date.

Q Did you write that there?

A Yes.

Q Did you also write your height?

A Yes.

Q Did you also write a number at the far end of the line in which you wrote in your name?

A Yes, my Social Security number.

MR. CAREY: Your Honor, the government offers Government's Exhibit 9B for identification in evidence.

Counsel, I believe, have had the opportunity.

MR. DURKAN: I have looked at it. I object on the same grounds as I did to 9A.

THE COURT: I will make the same ruling.

Members of the jury, this is only a photographic blow-up for convenience in this trial. It has no greater weight or importance or probative value than the original book from which it is taken. You must not draw any inference from the fact it has been enlarged.

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Q Mr. Dennehy, is this exhibit, Government's Exhibit 9B, a complete and accurate enlargement of pages 10 and 11 of Government's Exhibit 9 which you previously identified?

A Yes.

Q Will you please show the jury where on this document you entered your name?

A This line right here (indicating).

Q Indicating a line which has the name William Dennehy?

A Right.

Q The address which is indicated there, 53 Walburton Avenue, was that your true address at that time?

A Yes, it is.

Q On Government's Exhibit 9A the address of Ritters Lane appeared. Was that your true address at that time?

A Yes, it was.

Q Did you also include the other information which appears to the right of your name on Government's Exhibit 9B?

A Yes, sir.

Q Did you include or write the date on Government's Exhibit 9B which appears to the left of your name?

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A No, I did not.

Q Do you know who did put that date in there?

A To the best of my knowledge, it was the owner of the store, Mr. Jankowski.

MR. DURKAN: I didn't hear the answer.

THE COURT: I didn't hear it so I can't rule on the objection.

THE WITNESS: To the best of my knowledge, it was Mr. Jankowski.

THE COURT: In your presence?

THE WITNESS: Yes.

THE COURT: Objection overruled.

MR. BRUCE: May I be heard?

THE COURT: You can cross examine him in a minute or two, Mr. Bruce.

Q You mentioned earlier that you had received two transfer documents from Mr. Grady?

A Yes.

Q Did you know the people who were listed on those documents as the persons to whom you had transferred the weapons?

A No.

THE COURT: Was there somebody listed on the documents?

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THE WITNESS: Yes, sir.

Q Did Mr. Grady tell you who those people were?

MR. DURKAN: I object to it, your Honor, making reference to a document not in evidence.

THE COURT: The Court understands. Where are those documents now?

THE WITNESS: I threw them out.

THE COURT: You personally threw them out?

THE WITNESS: Yes.

THE COURT: Objection overruled.

You threw them out prior to this year?

THE WITNESS: Certainly, yes, sir.

THE COURT: You did?

THE WITNESS: Yes, sir.

THE COURT: All right.

Q When did you throw those documents out?

A Approximately six months later.

Q Six months later than what?

A Six months from the time I met Mr. Grady until the second signing of the rifle. I kept them for about six months. That was it.

Q Did Mr. Grady tell you who the people were who were indicated on the document as the people to whom you had transferred the rifles?

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MR. DURKAN: Objection to his leading.

THE COURT: It is leading. He may be asked if Mr. Grady said anything about the identity of the person on the form.

THE WITNESS: No, he did not.

THE COURT: Was the same name on both forms?

THE WITNESS: I don't recall if it was.

Q Do you recall any part of any of the names which were on that form other than your own?

A No, I do not.

MR. CAREY: I have no further questions of this witness, your Honor.

THE COURT: Mr. Durkan?

CROSS EXAMINATION

BY MR. DURKAN:

Q You have known Mr. Grady all your life, is that correct?

A No, sir.

Q Well, you're related, are you not?

THE WITNESS: May I explain that, your Honor?

THE COURT: As I understand, you said you were his half cousin?

THE WITNESS: See, my mother was married twice and when she married my father, I was born. So she had

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children before I was born and this is Mr. Grady's actual cousins. My half sisters and half brothers.

THE COURT: In other words, they are his actual first cousins?

THE WITNESS: Yes, sir.

THE COURT: And you are a cousin by marriage?

THE WITNESS: Yes, sir.

Q Now, in growing up in Yonkers, you met Mr. Grady from time to time, did you not?

A No, I have not. Not to my recollection I haven't.

Q 1970 is the first time you actually came to know him; is that correct?

A That is correct.

Q From 1970 on, for let's say a year or two, were you in close contact with each other?

A Not close contact, no.

Q Well, you both joined the Irish Northern Aid Committee; is that correct?

A That's correct.

Q You both worked in terms of raising money at concerts and dances and things like that?

A That is not correct.

Q Well, didn't you run concerts?

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A No, I ran nothing ran nothing at all.

Q Well, weren't yo ne treasurer of an organization that ran concerts and functions to raise money?

A By name only. I never had anything to do with it.

Q Well, your name was on it?

A Yes, it was. My name was on the card.

Q Your name was on the card?

A Yes.

Q It was on with your permission?

A Yes, it was.

Q Now, Mr. Dennehy, from time to time you spoke about the situation in Northern Ireland with Mr. Grady; is that correct?

A That is correct.

Q And you were familiar with what was going on over there at the time; is that correct?

A From what I read in the papers and heard, yes.

Q And you were sympathetic, were you not, to the causes of the minority?

A Yes, certainly.

Q You were aware, I think as you said, that they were defenseless in Northern Ireland?

A I didn't say defenseless, but that is correct.

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Q That is correct, is it not?

A Yes.

Q Out of this feeling, sir, you had a sympathy together with Mr. Grady and Mr. O'Brien and Mr. McCarthy and Mr. Casey; is that right, sir?

A That is correct.

Q And then there came a night or a day when you met with these gentlemen, Mr. Grady, Mr. O'Brien, Mr. Martin McCarthy, is that correct, sir?

A That's correct.

Q And Mr. Casey?

A That's correct, sir.

Q And at that time they said to you, in words or substance, will you help us or will you come with us to buy guns; is that correct?

A Almost correct. It wasn't "they." It was one individual.

Q So Frank Grady put it to you?

A Yes, he did.

Q That we are in the process of buying guns and will you come with us and help us by the guns?

A Are you saying this verbatim?

Q Not verbatim, but in words or substance.

A In words or substance, yes.

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Q As a matter of fact, Mr. Dennehy, you agreed forthwith?

A Certainly.

Q Had no reservations about it?

A None whatsoever.

Q You were willing to do it?

A Yes, I was.

Q You were glad to do it?

A Yes, I was.

Q You went with Mr. Grady and Mr. McCarthy and Mr. O'Brien and Mr. Casey?

A Correct.

Q To Mr. Jankowski's gun store, is that correct, sir?

A That's correct.

Q And when you were walking into the J&J Bait Shop on the morning, that morning in May of 1970, you knew the purpose for which you were there, did you not?

A Certainly.

Q And that was the purpose that had its origin back in your apartment some days or weeks before; is that correct?

A That's correct.

Q And that was to bring about the purchase of guns,

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is that correct?

A To bring about the purchase of a rifle.

Q Of a rifle?

A Correct.

Q And, sir, in bringing about the purchase of that rifle, you went into that store and you signed your name; is that correct?

A That's true.

Q And you knew what you were doing?

A I certainly did.

Q And you knew what it was for?

A Yes, I did.

Q And you knew that money was passed for that gun, is that correct?

A Yes, I did.

Q And the name that you signed and the address that you signed and the Social Security number that you wrote down there was all true and correct, is that correct, sir?

A Yes, sir.

Q And you have seen Mr. O'Brien here today, have you not, sir?

A Correct, sir.

Q Have you seen Mr. McCarthy?

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A No, sir.

Q Have you seen Mr. Casey?

A Yes, sir.

Q He is in the witness room, is he not?

A Yes, sir.

Q Did you see Mr. McCarthy here yesterday?

A No, sir.

Q Mr. Dennehy, as time went on you were approached by the government with respect to the transaction in this particular case; is that correct?

A Correct, sir.

Q Were you ever paid any money?

A In what respect, sir?

Q In respect to giving information --

A Informant, sir?

Q Yes, sir.

A No, sir.

Q Did you ever inform?

A No, sir.

Q Well, didn't you on one occasion send the government agents, when they were looking for Mr. Dalton, didn't you send them out to Seattle and tell them where he was?

A Are we speaking of Mr. Dalton or Mr. Grady?

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Q Luke Dalton.

A Yes, sir.

Q He was your roommate?

A Yes, sir, he was.

Q And you sent the government out to Seattle where he was staying with relatives; is that correct?

MR. CAREY: I will object to this,your Honor.

THE COURT: I will permit limited inquiry in this area.

MR. CAREY: May we have a side bar?

THE COURT: All right.

(At the side bar.)

MR. CAREY: If Mr. Durkan persists in this inquiry the government's position will be that he has opened the door to my redirect examination on which Mr. Dalton provided -- what caused Mr. Dalton to leave the vicinity of New York and go to Seattle.

What Mr. Dalton told Mr. Dennehy about the purchase of 13 -- illegal purchase of 13 firearms and what Mr. Grady told Mr. Dalton about keeping his mouth shut, getting the money Mr. Grady gave Mr. Dennehy to give to Mr. Dalton to get to Seattle.

THE COURT: I think with the present question I have there wouldn't be any door opening. It is relevant

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to the issues of credibility and bias. I don't consider this particular question opens the door to anything.

I am concerned about some of the tree-shaking that's going on at this trial. I don't criticize an attorney before his client if I can possibly avoid it, but let me just point out that you had this witness O'Brien. He said he was strong armed. A great big 250 pound fellow, strong armed by Grady, and you were not satisfied to leave it alone and use it in summation. You had to string out my trial with organ grinding cross examination, and here's what you did:

He corrected himself to say he was verbally strong armed. Then you were not satisfied with that. You got him to a position where he was wrong on his dates, and he appeared to be, and you opened the door for him to tell you that the date columns in the firearms book was blank when he signed. This kind of cross examination is unproductive. If you gentlemen want to do it, you are within your rights, so go ahead. I will allow this question, I will overrule the objection. It does not open the door. Maybe if you go a little farther, maybe you will open the door and maybe Mr. Carey can get in what he is talking about.

As it presently stands, no. Let's not have an organ grinding job done here.

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MR. DURKAN: As far as yesterday is concerned, I went into two inconsistencies. What am I going to do, let him get away with it?

THE COURT: It is beautiful in he corrected it. It is not intended to be critical, but I just want you to realize how it looks. It doesn't gain anything to string out these matters. It only reinforces the adverse testimony. But you go ahead. You're well within your rights and I'm overruling the government's objection.

MR. DURKAN: May I have the question re-read? I forgot what I asked.

THE COURT: When we get back there.

(In open court.)

THE COURT: I will overrule the objection. The reporter will read back the question.

(Question read.)

A That is not correct.

Q Now, Mr. Dennehy, on the second occasion when you went back, which I believe you said was some two months later in July of 1970, at that time, sir, when you went into Mr. Jankowski's store you knew, as you did on the previous occasion, the purpose of your visit there, did you not?

A I did, sir.

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Q And you knew when the book was presented or when you saw the book that you were signing in connection with the purchase of weapons; is that correct?

A Yes.

Q And at that time, sir, you signed again as you had signed before, giving your true name, your true address and your true Social Security number, is that correct, sir?

A That is correct, sir.

MR. DURKAN. No further questions.

THE COURT: Mr. Bruce?

MR. BRUCE: Thank you, your Honor.

CROSS EXAMINATION

BY MR. BRUCE:

Q At the time you were given this transfer paper, allegedly, by Mr. Grady, this was done outside the store; is that correct?

A Correct, sir.

Q This was done outside the presence of Mr. Jankowski; is that correct, sir?

A That's correct, sir.

Q You saw no transaction going on between Mr. Jankowski and Mr. Grady in reference to that which was given to you outside the store; is that correct?

A That is correct.

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Q You had no conversation with Mr. Jankowski at all, did you?

A None that I can recall, sir.

Q This was the first time you went into the store, big Jack O'Brien was with you. Is that correct?

A First times, yes, sir.

Q That was the time you signed the book?

A Yes, sir.

Q The second time you went back I think you testified on direct that you didn't know whether Mr. Jankowski was present or no, is that correct?

A That's correct.

Q So when you said on direct that you assumed or you thought that Mr. Jankowski filled in the date, you don't know whether he did or not, do you?

A That's correct, sir.

Q Now, you said that no gun was ever shown to you, is that correct?

A That's correct, sir.

Q Did you ask to be shown a gun?

A No, sir.

Q Did you know if a gun was on the premises that you had signed for?

A No, sir.

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Q You didn't know whether that gun had to be ordered or was there or where it was going to be procured from, did you?

A Certainly not, sir.

MR. BRUCE: No further questions.

THE COURT: Any redirect of this witness?

MR. CAREY: Yes, your Honor.

REDIRECT EXAMINATION

BY MR. CAREY:

Q Mr. Dennehy, why didn't you ask Mr. Jankowski for the gun?

MR. BRUCE: Objection.

MR. DURKAN: Objection.

THE COURT: Overruled.

A Why?

Q Why didn't you ask him for the gun?

A I really don't know. It was just a favor I was doing.

Q Did you know --

MR. BRUCE: Objection. He has answered the question, your Honor.

THE COURT: I think he has answered the question but I haven't heard the next question yet.

Q Did you go to Mr. Jankowski's to purchase a gun?

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A Yes, sir.

Q Did you go to Mr. Jankowski's expecting to pay for and receive a gun?

A No, sir.

MR. BRUCE: Objection.

MR. DURKAN: Objection.

THE COURT: Overruled. Enough doors have been opened.

A No, sir.

MR. CAREY: No further questions.

MR. DURKAN: Nothing further, your Honor.

THE COURT: You are excused.

(Witness excused.)

MR. CAREY: The government calls Edward McMorris.

E D W A R D M C M O R R I S, called as a witness on behalf of the government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. CAREY:

Q What is your profession?

A Construction electrician.

Q And for how long have you been a construction electrician?

A Since 1964.

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Q Do you know a man named Frank Grady?

A Yes, I do.

Q Do you see him in this courtroom?

A Yes.

Q Would you please point him out.

A He is sitting right over there. The blue suit and the red hair. The third man in at the second table.

MR. CAREY: May the record reflect the witness has identified the defendant Frank Grady?

THE COURT: Yes, the record will so indicate.

Q When did you first meet Frank Grady?

A On the job we were working together, Union Carbide. A new construction job.

Q When was that?

A 1970.

Q Approximately when in 1970?

A Well, I worked on the job from February to August, and that period of time I met him, I don't know exactly when, but we worked on the job together.

Q Did there come a time when Frank Grady asked you to do something for him?

A Yes.

Q When was that?

A It was in the late spring, early summer of 1970.

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Around there. It was a nice day out, warm.

Q Who, if anyone else, was present when he asked you that?

A None that I can recall. Just Frank and myself.

Q Where did that occur?

A On the job, Union Carbide.

Q Would you please tell the jury what, if anything, Frank Grady said to you and what, if anything, you said to him?

A Well, he asked me would I do him a favor and go down and sign for some weapons. He said there was nothing wrong with it legally --

Q Speak up a little louder.

A He said there was nothing wrong with it legally; that to sign for the weapons as the purchaser of the guns and there would be no more to it. What would happen is I would sign for the weapons, then as the owner of the weapons I would receive a transmission paper showing me that I disposed of the weapon. This way here I had showed that I had legally owned the weapons and then I had legally sold the weapons.

Q That's what he told you?

A Yes.

Q What, if anything else, did he tell you?

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A Well, he told me "Buy two guns," I'd say for two and --

Q Did he tell you why he wanted you to do this for him?

A He said the weapons were going overseas, and that was all I'd agreed to know.

Q Did he say anything else about what you should do with the weapon after you received it?

A No, because I never received the weapons.

MR. BRUCE: Objection.

THE COURT: I'll strike out all of the answer following the word "No."

Q Did he say whether or not you would receive the weapon?

A Yes. He said I wouldn't receive the weapon.

MR. BRUCE: At this juncture, your Honor, I respectfully ask the record to reflect as to this type of testimony that my exception be deemed taken.

THE COURT: You can have a continuing motion to strike testimony as to any of these conversations as to which Mr. Jankowski is not actually present.

MR. BRUCE: Thank you, your Honor.

Q Mr. McMorris, did there come a time when you did anything as a result of that conversation you told us

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about just now?

A Yes. That afternoon, as best I can recall, we went down, Frank Grady and myself, went down in separate cars, and that day there I signed for the weapons.

Q Where did that take place?

A In Yonkers.

Q Do you know where in Yonkers?

A On Yonkers Avenue.

Q Do you know the name of the place?

A J&J is the name of it. I found that out yesterday. I had no recall of the name of the sporting goods place. All I know is where it is.

Q Who, if anyone else, was present at that time?

A Just Frank, myself, and there was one man in the store.

THE COURT: Where was this Union Carbide job located?

THE WITNESS: In Tarrytown. Just above Elmsford on the Saw Mill Parkway.

Q What, if anything, was done or said by yourself and the others who were in the store at that time?

A Frank and I went into the store. Frank told me to wait up in the front of the store and Frank walked to the back and he talked to the man that was in the store.

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Then Frank and the man came up to the front. They produced a book --

Q Who produced that book?

A The man behind the counter produced the book. He said that you have to sign here for the weapons. I signed my name to two lines for two rifles.

Q Did he tell you where you should sign your name in the book?

A Yes, he pointed to where I should sign.

Q Was anything said at that time by the man behind the counter?

A Not that I can recall.

Q Was anything else said by yourself or Frank Grady at that time?

A Not that I can recall.

Q After you signed the book on two lines, what if anything did you do?

A Well, then I went outside and Frank stayed inside for a little while. Then Frank came out and we said our good-byes and we departed.

Q Did you have any conversation at that time other than saying good-byes?

A Not that I can recall.

Q Would you recognize the man in the store if you saw him again?

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A No, I doubt it.

Q Could you please describe him for the jury?

MR. BRUCE: I object, your Honor.

THE COURT: Overruled.

A I'd say he was about 5'10", he's white, and he was stocky. Maybe 200 pounds. That's about all I recognized of him.

Q Did he at any time ask you why you were in the store?

A Not that I can recall, no.

Q Did you at any time see any money change hands while you were in the store?

A No.

Q Did you ever see the weapons which you signed for?

A No.

Q Did you ever authorize anybody else to pay for the weapons which you signed for?

A No.

Q Did you ever authorize anyone else to pick up the weapons which you signed for?

A No.

Q Did there come a time when you spoke to Frank Grady again after signing for the weapons?

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A Yes. I met him at a union meeting. Our union meets once a month, and I attended fairly regularly and Frank was at one meeting, he and a brother member of the organization.

Q When was that, if you can recall?

A It was the summertime, because I was standing outside. It was before the federal agents had stopped by the house.

THE COURT: Can you give us a year?

THE WITNESS: Oh, I'd say '73.

Q In 1970 did you have any other conversations with Frank Grady after you left -- after the day which you signed for the weapons at the store?

A Yes, I would see him on the job because with the agreement being after I had signed for the weapons and there would be a transaction where I would legally dispose of the weapons, transfer them to somebody, and I was supposed to get a paper the next day or the day after.

When I had seen Frank on the job I would ask him where the paper was because I was becoming a little concerned with not having the weapons and not knowing where the weapons were and being stuck with somebody else running around with my guns.

Frank had said to be patient, the paper would come.

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Then a few days later Frank come up to me on the job and said, "Here is the paper. You just have to put your name on it."

I had to sign it, put the serial numbers down on it and the date.

Q What, if anything, did he say you should do with that paper after he gave it to you?

A He said that I should keep it because in case-- a person was only allowed to won two semi-automatic weapons and that if I ever wanted to buy a gun, the record would show that I had purchased the guns and if they questioned me about it, that I could produce this transaction paper which would allow me to purchase, if I ever wanted to purchase a semi-automatic weapon, to purchase it again.

Q When Mr. Grady gave you that piece of paper, did you know the person who was listed on that piece of paper as the person to whom you had sold the weapons?

A No.

Q Did Mr. Grady tell you anything about who was listed on that document?

A Not that I can recall.

Q Did you ever meet at any time after that the person who was listed on that document?

A No.

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Q Do you have any idea who that person is?

A No.

Q Earlier you started to tell the jury that in 1973 you had a conversation with Mr. Grady. Would you please tell the jury where you had that conversation?

MR. DURKAN: If your Honor pleases, may we have a side bar on this line of questioning?

THE COURT: This is not offered in connection with Mr. Jankowski, as I understand, but you are welcome to attend if you wish, Mr. Bruce.

MR. BRUCE: I waive my appearance, your Honor.

(At the side bar.)

MR. DURKAN: If your Honor pleases, the line of questioning now being taken up by the U.S. Attorney is going into what constituted the court, Count 20, in the second indictment, and this has to do with statements made about taking care of his family if he went to jail, or something.

MR. HOLMAN: I have exactly the right spot, your Honor.

THE COURT: Don't quote on the record. Just point it out to me.

This is a 1973 conversation at pages 1A5 and 6. Is that what it is?

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MR. CAREY: A transcript of ne grand jury testimony of this witness.

THE COURT: Where is the 1973 conversation?

MR. CAREY: I don't believe it is specified, your Honor, by precise dates.

MR. DURKAN: The conversation that we are now getting into is the conversation which led up to Count 20 which you dismissed the other day for another reason. In substance, what it says is shown there. May I just point it out?

THE COURT: Page SA8?

MR. DURKAN: This thing is not in order.

THE COURT: Perhaps we ought to get a representation from the U.S. Attorney on the record as to what he intends to elicit, rather than go hunting through the grand jury minutes.

MR. DURKAN: This is it, your Honor (indicating.)

(Pause.)

MR. DURKAN: That three-line answer there was what constituted Count 20,and I submit we are getting into something that is not before this jury, not in the indictment, and can do nothing but prejudice my client.

THE COURT: Is that all that's sought to be elicited here?

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MR. CAREY: I have to look at it, your Honor.

THE COURT: Tell me for the record what you propose to do?

MR. CAREY: A witness will testify that he had a conversation with Frank Grady. Frank Grady told him that the matter of his signing for the two weapons is being investigated; that he should keep his mouth shut, in effect--

MR. HOLMAN: That's not what he said.

THE COURT: Let Mr. Carey finish.

MR. CAREY: That if the investigation ever resulted in his being sent to prison, that his family would be taken care of.

MR. DURKAN: Your Honor, that is what constituted Count number 20, that and that alone. That matter is not before the jury and is not in the indictment. Quite frankly, I would tell you I don't think it ever should have been in the indictment.

THE COURT: Let's not get off on a tangent. I'm not certain that this particular testimony would constitute evidence of consciousness of guilt in the sense of such pressing testimony. What he is telling him in effect is don't say anything, and if you're convicted, we'll support your family.

MR. CAREY: That's not true, your Honor. It is

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true but not complete, rather. What the witness was told was to "keep your mouth shut." In effect, don't talk to the investigators. And if you get convicted as a result of what you did, that the IRA -- I believe he will say the IRA, although I'm not certain, will pay your salary to your family.

THE COURT: I really can't read that into it, Mr. Carey. I think if all you're offering is what is in the grand jury minutes --

MR. CAREY: I am offering what I just said, not what is in the grand jury minutes.

THE COURT: Give it again.

MR. CAREY: The witness will testify he was approached by Frank Grady at about the time the agents were investigating this case; that Frank Grady told him that if the investigators should approach him and ask him any questions about the weapons which he had signed for in 1970, that he should not talk to them; that if as a result of failing to talk to them he was to be -- go through a procedure which resulted in his imprisonment, that the IRA would take care of his family by paying the family his salary.

MR. DURKAN: May I be heard on that, your Honor?

THE COURT: Yes.

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MR. DURKAN: As far as that is concerned, again it is in the realm of advising a man that he has had a dealing with. He is telling him these are the options that are open to you and this is what may happen, and if it should happen --

THE COURT: I think it's borderline. I best not take it. I sustain the objection.

MR. CAREY: That's not a fair characterization of it. What the question is here is simply the weight of the evidence. It is certainly evidence of consciousness of guilt, no question about that. The question is whether it is sufficent to constitute --

THE COURT: It isn't necessarily consciousness of Grady's guilt, you see. That's what it would be offered as. I believe I best rule it out. I admit it is a borderline question.

MR. CAREY: I don't think it is a borderline question, your Honor. The evidence in this case is that Frank Grady asked Mr. McMorris to do something that was in fact illegal; that Frank Grady, when he found it was being investigated , told the people to keep their mouth shut. To do so he offered a bribe and tried to induce that result by offering a bribe, a man receiving a salary to take care of his family if he went away.

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THE COURT: I'm going to adhere to my ruling.

(In open court.)

THE COURT: I will sustain the objection.

How much longer will you be, Mr. Carey?

MR. CAREY: I want to show the witness some exhibits and question him about those. It won't take more than five minutes.

THE COURT: We will take a ten-minute recess at this time.

Members of the jury, you may withdraw to the jury room.

(Recess.)

(In open court - jury not present.)

MR. CAREY: Before the jury is called --

THE COURT: Wait until Mr. Durkan returns.

MR. CAREY: Yes, sir.

(Pause.)

THE COURT: All right, Mr. Carey, you may be heard.

MR. CAREY: Your Honor, I would like to give to the Court my copy of handbook, Proving Federal Crimes, and I have bracketed a portion of page 92 on evidence which is admissible to prove consciousness of guilt. I offer it to your Honor because I believe it supports the government's

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position that this evidence, which we discussed at the last side bar conference, is admissible as consciousness of Mr. Grady's guilt.

THE COURT: I don't want to take the handbook.

MR. CAREY: It is a matter of question of weight which is a question for the jury to decide.

THE COURT: I don't want to take the handbook because if I do then defendants' counsel would have a right to see it or copy it.

MR. CAREY: I have no objection to defense counsel seeing it.

THE COURT: There was a day around here when even a Judge couldn't see that book. Do you realize that? that book used to be secret. I don't want to take the book. I think the rule is clear. However, I regard the issue as being this:

Where the evidence is somewhat equivocal, when it is proferred, and where its probative value is so small and it is substantially outweighed, particularly in a two-defendant trial, by the danger of confusion or unfair prejudice, that I am entitled to keep it out. I think it is a borderline issue here, but I have ruled, I think correctly and in good conscience, and I am basically relying on Rule 403 of the New Rules of Evidence. If there is something Mr. Grady did which

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has a little greater weight which shows independent evidence of consciousness of guilt, of course it would be admissible. I think under these circumstances what I saw in the grand jury testimony and what was offered by yourself at the side bar, didn't rise to the level where I ought to take it over objection under all of the relevant circumstances of this case.

I will adhere to my prior ruling. I am not excluding evidence of conduct which clearly shows consciousness of guilt. That I would take.

MR. CAREY: Your Honor, I don't see that the government could ever produce evidence any clearer than that which resulted from a conversation which proves consciousness of guilt.

THE COURT: I don't regard that as a threat or intimidation on what we are taling about now. However, I will adhere to my ruling. Please bring in the jury and ask the witness to return to the stand.

MR. CAREY: While we are waiting for the jury, of course the only theory under which that evidence is admissible is not consciousness of guilt. It shows Mr. Grady's knowledge of what happened. It shows that he himself was involved in the conspiracy and, thereofre, it is evidence showing his membership in the conspiracy.

THE COURT: That, of course, is a technically valid

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argument. I don't know how much more evidence you need than what's already here in this book. By book, I'm talking about Exhibit 9, 9A.

MR. CAREY: The fact that the government may be introducing in evidence something which definitely hurts the defendant --

THE COURT: All that is true, Mr. Carey.

MR. CAREY: That doesn't mean it should be excluded.

THE COURT: I have made my ruling using the best discretion and judgment I know how and I propose to adhere to it.

MR. CAREY: May the witness be instructed that nothing I ask him will be directed to that matter?

THE COURT: All I will say to the witness is answer the questions directly and completely and do not make any speech or volunteer anything.

(Jury present.)

THE COURT: You may resume, Mr. Carey.

BY MR. CAREY:

Q Mr. McMorris, I direct your attention to Government's Exhibit number 9, to pages 10 and 11; can you identify that document?

A Yes. This is the paper that I signed the day in

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the sporting goods store.

Q And can you identify it? How do you identify it?

A By my signature.

Q Is that your signature?

A My printing, my writing.

Q I show you Government's Exhibit 9B in evidence. Is that a complete and accurate copy of pages 10 and 11 of Government's Exhibit 9 which you have before you?

A Yes.

Q Would you please show the jury where on Government's Exhibit 9B you entered your name?

A My name is entered here and here (Indicating).

Q Indicating the two lines on which appear the name Edward J. McMorris, is that correct?

A Yes.

Q Tell the jury which portions of that line you signed.

A I signed my name, my address, my date of birth, my Social Security and the town where I live, on both lines.

Q Did you put the date which appears to the left of your name?

A No.

Q Was the date there when you signed your name?

A Yes.

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Q Do you know who put that date in there?

A No, I don't.

Q Did you select the two lines on which your name is entered?

A No.

Q Who told you to put your name on those two lines?

A I don't recall who in the store at the time.

Q Do you know a man named James Schweitzer?

A Yes.

Q How do you know him?

A He's in construction. He's an electrician like myself. I know him through the union.

Q Have you ever seen him in the company with Frank Grady, in the company of Frank Grady?

A Not that I can recall.

Q Do you know a man named John J. Horrigan?

A Yes.

Q How do you know him?

A Electrician, same local.

Q Have you ever seen him in the company of Frank Grady?

A Not that I can recall. My recollection, we were in the same group on the job.

Q Do you know a man by the name of Joseph Tierney?

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A No.

Q Did you ever record, either make a mental note ofthe serial number of the two firearm you signed for?

A Yes.

Q Where did you write them down?

A On a piece of paper.

Q What have you don with that piece of paper?

A The original piece of paper I threw out. After I put them on the bill of sale.

Q I show you what has been marked Government's Exhibit 11. Can you identify that?

A Yes.

Q How can you identify that?

A This is the paper that Frank Grady had given me showing the transaction of the guns.

MR. CAREY: The government offers Government's Exhibit 11 in evidence.

MR. DURKAN: I am going to object as being probative of nothing in this case.

THE COURT: Hand it to the clerk.

(Pause.)

THE COURT: When and where was this given to you?

THE WITNESS: On the job.

THE COURT: When, about, in years?

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THE WITNESS: It was a few days after I had signed for the weapons.

THE COURT: Who gave it to you?

THE WITNESS: Frank Grady.

TEH COURT: Objection is overruled.

MR. BRUCE: Your Honor, please, I object on behalf of my client.

THE COURT: Subject to connection on behalf of Mr. Jankowski.

(Government's Exhibit 11 was received in evidence.)

Q Mr. McMorris, would you please tell the jury which portions of this form you yourself filled in?

A I wrote my name.

Q On which part of that document?

A On the top line I wrote my name. On the second line I wrote the month and day. On the third line I wrote the serial number to one of the weapons. On the fourth line the serial number to the other weapon. Then down where it says "Transfer Record" I signed my name..

Q Did you make any of the other handwritten entries in that form?

A No.

Q Do you know who typed that form?

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A No.

Q Do you know who Michael O'Callahan is?

A No.

Q Did Frank Grady ever tell you who Michael O'Callahan was?

A No, not that I can recall.

MR. CAREY: At this time I would like to show the jury Government's Exhibits 10 and 11, your Honor.

THE COURT: All right.

(Pause.)

THE COURT: You may resume, Mr. Carey.

MR. CAREY: Thank you, your Honor.

Your Honor, I have no further questions of this witness.

THE COURT: Mr. Durkan.

CROSS EXAMINATION

BY MR. DURKAN:

Q Mr. McMorris, you knew the defendant Frank Grady for some period of time, did you not, before May of 1970?

A Are you talking to me?

Q Yes.

A I thought you were talking about somebody else.

Q Mr. McMorris, you knew Frank Grady, did you not, for some period before May of 1970?

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A Just from the job.

Q From the job?

A Yes.

Q And if you can tell us, approximately over what period of time was that, that you knew him before 1970.

A Actually, if I recall, I recall meeting him on the job.

Q In any event, he was a person that you came into contact with on a daily basis on the job, is that correct?

A Yes.

Q And you had from time to time occasion to talk to him about various things, did you not?

A Yes.

Q To the work and social problems, and so forth, and so on, is that correct?

A To the work and labor problems.

Q Did you know of his interest in the situation in Northern Ireland?

MR. CAREY: May we have a time fixed?

MR. DURKAN: Prior to May 1970, during the time he knew him.

THE COURT: All right. You can answer the question.

A Prior tothe time I signed for the weapons? I

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don't recall.

Q Well, were you interested in the situation in Northern Ireland prior to May of 1970?

A No. Just what I read.

Q Just what you read?

A Yes.

Q Well, having read it did you have any dealings one way or the other about it?

A No.

MR. CAREY: Objection.

THE COURT: He has answered it already and I will let it stand.

Q There came a day when you had this conversation with Frank Grady when he asked you to do come with him to purchase the rifles; is that correct?

A Yes.

Q And that was, I believe, you told us on the job, is that right?

A Right.

Q And you mentioned something that you knew or that he said they were going overseas; is that correct?

A Yes.

Q Did you know what he meant or did you know what was meant by overseas?

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A Yes.

Q Did you understand that to mean Northern Ireland?

A I never said. I assumed that's where they were going.

Q You assumed?

A Yes.

Q And that was something that you did not disagree with at that time?

MR. CAREY: Objection.

THE COURT: I will permit him to testify as to his state of mind when he went down to sign for the guns.

A Repeat the question.

THE COURT: He is asking you did you intend that the guns go overseas.

THE WITNESS: Yes.

Q So that when you went with Frank Grady up to the J&J Bait Shop, you were aware of the fact that you were going with him to purchase two rifles; is that correct?

A Yes.

Q There was no secret between him and you as to the purpose of the trip up to the J&J Bait Shop on that day; is that right?

A Right.

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Q And when you went in, sir, it was your intention to sign as the purchaser of the two guns which the -- the serial numbers of which are listed on these exhibits?

A Yes.

Q That is precisely what you did?

A Yes.

Q When Frank Grady asked you to sign, he didn't ask you to sign a name other than your own, did he?

A No.

Q When you went to sign, you signed your own true name?

A Yes.

Q And your own true address?

A Yes.

Q And your own true Social Security number?

A Yes.

Q And there was at that time, sir, no attempt to deceive Mr. Jankowski or whoever was in the store concerning the purpose of your visit to that particular gun shop ; is that right?

A I don't know.

Q Well, you weren't going to put down false information?

A Right, yes.

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Q And you gave it as you truly knew it to be?

A Yes.

Q And following the signing of the page, and I am now referring to Government's Exhibit 9B, following the signing of that particular page, Mr. McMorris, I believe you showed us on direct examination you signed your name -- would you show me where, sir?

A Here and here (indicating).

Q You signed your name on two lines on the right hand side of the page, is that correct?

A Yes.

Q You signed it, sir, under the name "Sold To," and where it says "Customer's Name," you wrote down your name, is that right?

A Yes.

Q Where it says "Address" meaning the customer's address, you put down your own as being the customer's address?

A Yes.

Q In addition, so there wouldn't be any doubt whatsoever about your identity, you wrote in your date of birth and your Social Security number?

A Yes.

Q And all of it was true and all of it was the fact

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as you knew the facts to be; is that right?

A Right.

Q Now, sir, follwoing the signing as a customer in the store, you mentioned to us, I believe, about a piece of paper which has gone into evidence-- may I have it, Mr. Carey, please?

The transfer slip.

You had been told or you had some conversation with Mr. Grady about a certificate of transfer and I believe that you have identified that as Government's Exhibit 11, which is the last exhibit that you just identified.

A It has my signature on it, yes.

Q And you were aware, sir, having signed that book and having gone to the J&J Bait Shop, that you were listed on the records as the purchaser of the weapons involved; is that correct?

A Yes.

Q And you knew, sir, that ownership was then listed in your name, is that correct?

A Yes.

Q And you were concerned about that, were you not, sir?

A Yes, sir.

Q And I believe you told us on direct examination

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you were concerned because you didn't want somebody running around with your guns, is that right, sir?

A Yes.

Q And so you sought after Mr. Grady and said that "I want the transfer slip so that I can legally and properly transfer ownership out of my name," is that right, sir?

A Yes.

Q And accordingly, you wrote yourname, you filled in the serial numbers, you wrote your address and you signed it, is that correct, sir?

A The serial numbers, the date, the signature and the printing, that's right.

Q You inserted all of that in the form and you signed your name, is that correct?

A Yes.

MR. DURKAN: No further questions.

THE COURT: Any questions of this witness, Mr. Bruce?

CROSS EXAMINATION

BY MR. BRUCE:

Q You testified on direct, Mr. McMorris, that you authorized no one to pick up these weapons and the weapon was not exhibited to you --

THE COURT: Please, don't do that. Don't

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summarize. Just ask him a question.

Q Now, did you, when you went to this shop, did you expect that gun to be delivered to you at that time, sir?

A No.

Q And you don't remember the person that was behind the counter in that shop the day you went there, do you?

A No.

Q And the description that you gave, 5'10", 200 pounds, is from the best of your recollection, is that correct?

A Yes.

Q And to your knowledge this man, John Jankowski, who sits here, let the record reflect the defendant, you do not remember if you ever saw him before, do you?

A No.

Q And you do not know if he had anything to do with this transaction that you have testified to here today, do you?

A I don't recall, no.

MR. BRUCE: No further questions.

REDIRECT EXAMINATION

BY MR. CAREY:

Q Was part of your purpose in going to the J&J Bait Shop on the day you went to sign the record, to receive a weapon?

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A Yes.

Q Did you receive a weapon?

A No.

Q Was that your purpose in going, to receive a weapon?

MR. DURKAN: Objection. Asked and answered.

THE COURT: It has been. He can tell us how or under what circumstances he did not receive one.

Did you ask for a weapon?

THE WITNESS: No, I did not.

Q You testified that you did not expect to receive one; is that correct?

A That's right. I did not expect to receive the weapon.

Q But you now say nevertheless that your purpose in going to the store was to receive a weapon?

MR. BRUCE: Objection.

THE COURT: Sustained.

Q What was your purpose in going to the store?

A To sign for the weapons.

Q Was your purpose to receive a weapon?

A No.

Q Was your purpose to pay for a weapon?

A No.

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THE COURT: Anything else from this witness?

MR. CAREY: I do have, your Honor.

THE COURT: I thought you were getting ready to sit down.

Q Mr. McMorris, when you signed the document which is reflected in this case by Government's Exhibit 9B, did you first read the caption at the top of the document?

A No.

Q Did you read the caption "Sold To" at the top of the document on page 11?

A No.

Q Did you read "Customer's Name"?

A No.

Q Did you read "Address"?

A No.

Q Have you ever been a customerof Mr. Jankowski or of that store where you went to sign this document?

A No.

MR. DURKAN: Objection to that unless he is talking about a prior date, not the day in question.

MR. CAREY: I am talking about this day or any day in your entire life.

THE COURT: Let's separate this day from the prior day.

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Q On this day were you a customer of that store where you signed this document?

MR. DURKAN: Objection, your Honor.

THE COURT: Sustained as to form.

A That day --

THE COURT: Now, I've ruled against that question, Mr. McMorris.

THE WITNESS: I'm sorry.

Q Did you ever purchase anything at that store?

A No.

MR. DURKAN: Objection to that, your Honor.

THE COURT: Well, I will permit him to be asked whether he ever paid for anything, whether he ever took delivery of anything. The jury can infer whether or not he was a purchaser.

THE WITNESS: That was the only time, your Honor, that I was ever in that store.

THE COURT: Did you pay any money when you went in that day?

THE WITNESS: No, your Honor.

THE COURT: Did you go out with anything?

THE WITNESS: No, your Honor.

MR. CAREY: I have no further questions, your Honor.

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MR. DURKAN: Will your Honor bear with me a moment while I confer with Mr. Bruce?

THE COURT: Certainly.

(Pause.)

MR. DURKAN: No further questions, your Honor.

MR. BRUCE: No further questions.

THE COURT: You are excused.

(Witness excused.)

MR. CAREY: The government offers Government's Exhibits 3, 4, 5 and 5 in evidence.

MR. DURKAN: Will your Honor bear with me for a moment?

THE COURT: Yes.

(Pause.)

MR. DURKAN: If your Honor pleases, counsel for both defendants have no objection to Exhibits 3 and 4. With respect to 5 and 6, I would ask for a side bar conference.

THE COURT: Is it feasible to have the conference after the jury goes for lunch?

MR. CAREY: It would be a good time to break for lunch.

THE COURT: Members of the jury, please withdraw and return at a quarter of 2. We will try to get out early today in view of the weather.

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(Jury leaves the courtroom.)

MR. DURKAN: The disputed exhibits, your Honor, are Government's Exhibits 5 and 6. The defense objects to them, your Honor, because the language contained in both of them includes language which has already been stricken from the indictment by your Honor.

MR. CAREY: It has not been stricken from the indictment.

MR. HOLMAN: I had a conversation with Mr. carey with reference to these exhibits. I pointed out objectionable language to them. He himself redacted and cleaned up the indictment. He felt there was a problem with it. I spoke to him when he showed me the exhibits this morning and I said "Are you going to redact those words out?"

Mr. Carey said to me "Yes."

So I just as a matter of course asked him when he was going to offer them, whether he had redacted and he said "No."

I don't know what's going on here this morning.

THE COURT: I don't know by right he has to modify the exhibits. These are exhibits under seal of the Department of State of the United States.

MR. CAREY: Your Honor, I would like to explain myself. I indicated to Mr. Holman I would have no objection

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to withholding from the jury certain portions of those two exhibits referring to ammunition and implements of war.

I have reconsidered that since, because this particular situation can be distinguished from the charge in the indictment that he illegally exported those things. This document merely states the defendant did not have a license to export.

MR. DURKAN: I will stipulate on behalf of Grady to that, your Honor.

THE COURT: That he had no license?

MR. DURKAN: No question about that.

THE COURT: That's what Exhibit 5 is meant to go to.

How about you, Mr. Bruce?

MR. BRUCE: If your Honor pleases, my client is not involved in this matter at all.

THE COURT: I don't know that that's so. His name is mentioned in Exhibit 5 for identification, J&J Bait Shop.

MR. BRUCE: I would object as being improper as to the defendant Jankowski.

THE COURT: In the absence of a complete stipulation I cannot go that route, much as I would like to do so.

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MR. HOLMAN: Clarifying the reason for the government including Mr. Jankowski's name was probably at the time they asked for it they were charging a conspiracy to export, and Mr. Jankowski was, in their first couple of documents, in that conspiracy.

He is no longer part of the conpsiracy with respect to export, your Honor. So it is totally irrelevant with respect to him.

MR. CAREY: Your Honor, first of all, there is no argument or charge that there was any conspiracy to export, number one. So Mr. Holman's reference to that charge is incorrect.

Number two, the document merely shows that Mr. Jankowski himself had no permission to do any exporting.

THE COURT: It shows the same thing for J&J Bait Shop.

MR. CAREY: Yes, your Honor. That no one had permission to export weapons at all. The charge is not that Mr. Jankowski did so. The government wants to show Mr. Grady had no derivative right from Mr. Jankowski.

THE COURT: I will take the exhibits in the absence of a stipulation. The objection is overruled. If it is necessary to give a curative instruction as to the exhibits I will do so, but I don't read into it what you do. He is

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talking about arms and the fact they have additional words in there such as ammunition and implements of war is immaterial. All you are charged with is rifles.

MR. DURKAN: If the jury reads implements of war, it conjures up all sorts of things in their mind.

THE COURT: If you want an instructional charge, I will.

MR. BRUCEK: It is inflammative and not probative of anything.

THE COURT: It lays at your door. The co-defendant is prepared to stipulate and obviate this.

You see the stipulation to obviate these two exhibits would have to extend to Mr. Jankowski, to the J&J Bait Shop, as well as Mr. Francis Grady and Francis Michael Grady.

MR. BRUCE: Nothing has been adduced at this trial to connect Mr. Jankowski or J&J Bait Shop --

THE COURT: I made my ruling. I don't intend to argue the point. If anyone wants a charge limiting the language in these exhibits I will do so, but I would like you to present it in writing, your request.

MR. DURKAN: I believe we will want that.

THE COURT: Come in with that in written form.

MR. CAREY: Government's Exhibits 3, 4, 5 and 6

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are received in evidence?

THE COURT: They will be when the jury returns.

Anything else that can be cleared up while you're all here?

MR. CAREY: I have 3500 material which I received this morning. I would like to give a copy of Government's Exhibit 3532 to Mr. Durkan.

Do you acknowledge receipt?

MR. DURKAN: Yes.

MR. CAREY: And a copy of document numbered 3532 to Mr. Bruce.

Do you acknowledge receipt?

MR. BRUCE: I do so.

THE COURT: Thank you, gentlemen. We will be in recess until a quarter of 2.

(Luncheon recess.)

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T3
after lunch
USvGrady
3/9/76

RDjw 1

AFTERNOON SESSION

1:45 P.M.

(In open court - jury present)

THE COURT: At this time Exhibits 3, 4, 5 and 6 will be received in evidence.

Call the next witness.

I did not observe you stepped out, Mr. Carey. I just stated on the record that Exhibits 3, 4, 5 and 6 were received in evidence.

(Government's Exhibits 3, 4, 5, and 6 are received in evidence)

xxx

THE COURT: Call your next witness.

MR. CAREY: The government calls John Casey.

JOHN M. CASEY, called as a witness on behalf of the government, after being duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

XXX

BY MR. CAREY:

Q Mr. Casey, by whom are you employed?

A At the present I am unemployed.

Q What is your profession?

A I'm a journeyman plumber, Local Union 209.

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Q For how long have you been a plumber?

A Sixteen years.

Q Do you know a man named Frank Grady?

A Yes, I do.

Q For how long have you known him?

A Known him about sixteen years.

Q Do you see Frank Grady in this courtroom?

A Yes.

Q Would you please indicate where you see him?

A Sitting over there in the black suit.

MR. CAREY: May the record reflect the witness has identified the defendant Grady?

THE COURT: Yes.

Q Do you know a man named Thomas Duffy?

A Yes.

Q When did you first meet Thomas Duffy?

A I met Thomas Duffy down in theBronx on Jerome Avenue. Frank Grady introduced me to him.

Q When was that?

A Farly 1970

Q Approximately what month,if you can recall?

A January, February, could have been around there.

Q Who, if anyone else, was present at that time?

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A Myself, Frank Grady, Tom Duffy, fellow by the name of Danny Diamond and a fellow by the name of Finnigan.

Q Would you please tell the jury what, if anything, was said at that time and who said it?

A Thomas Duffy was counting money out --

MR. DURKAN: If your Honor pleases, I object to what anybody other than my client said at that time.

THE COURT: I would take the conversation if it was in the presence of Mr. Grady.

Has the time been fixed of this?

MR. CAREY: I understood the witness to say January 1970.

THE COURT: All right, I'll take it.

Tell us what was said by Mr. Grady or in his presence, and if you can tell us who said it.

THE WITNESS: Went to the back of the pub and Duffy was seated at the back of the table, Diamond was there, Grady and this fellow Finnigan.

Tom Duffy had a large amount of money that he was counting. It was receipts from a dinner-dance the Irish Northern Aid Committee held.

Q How do you know that?

A He said so.

Q Who?

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A Tom Duffy. He was in an argument with Finnigan over chances that were not sold at the dance by Finnigan.

Q What, if anything, was said at that time by anyone else?

A That was the limit of the conversation.

Q Did Frank Grady say anything?

A Not that I recall.

Q And which branch ofthe Irish Northern Aid Committee was Mr. Duffy associated with?

MR. DURKAN: Objection.

THE COURT: I don't know that it matters. It's the same branch this witness belonged to, is that what you are trying to show?

MR. CAREY: No, it's not, your Honor.

THE COURT: All right. Can you identify it?

A Thomas Duffy was a member of the Bronx branch of the Irish Northern Aid Committee at that time.

Q Did there come a time when you became a member of an Irish Northern Aid Committee?

A Yes, there was.

Q When was that?

A It was about a month or two after I had met with Duffy. Frank Grady, myself, and Jack O'Brien met at

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the Chippawa Club to form the Yonkers branch of the Irish Northern Aid Committee.

Q Who, if anyone else, was present besides the men you just mentioned?

A I believe Willian Dennehy was there and Luke Dalton, myself and Frank Grady.

Q Would you please tell the jury what, if anything, was said at that time?

A Frank Grady indicated we were forming a chapter up and he was to be the chairman. At that time Jack O'Brien became very angry. He said to Frank Grady if it wasn't for me you wouldn't know any of the fellows downtown in the Bronx branch.

Frank Grady offered him to take another post of the committee and he refused.

Q What, if anything else, was said at that meeting?

A Outside of that I don't recall.

Q Was anything said to you about taking a position on the committee?

A I became secretary on the committee.

Q Was that discussed at that time?

A Yes.

Q And was anything discussed about

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who the people would be who would fill the other positions?

A Yes, Joseph Tierney was on the committee and Willian Dennehy. Willian Dennehy was the financial secretary.

Q Did you ever have any discussions with Frank Grady about yourself and the other people doing something for him?

A Doing something for who?

Q Doing something for Mr. Grady?

A I don't follow the question.

Q After this meeting when you formed or discussed forming the Irish Northern Aid Committee, did you ever have any other meetings where you discussed things with Frank Grady?

A Well, most of the meetings that were held by the committee were held at the Chippawa Club.

Q Aside from meetings of the Northern Irish Aid Committee, did you ever discuss anything else with Frank Grady?

A Yes, purchase of weapons.

Q When did you discuss that?

A It was March of 1970, I believe.

Q Was that the first time that you discussed it with Mr. Grady?

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A Yes. Frank informed me --

Q Before you say what was said, who, if anyone else, was present at that time?

A Myself and Frank Grady.

THE COURT: Where was this?

THE WITNESS: I believe it may have been my house or his house. I don't recall exactly.

Q And what, if anything, did you and Mr. Grady say at that time?

A Frank Grady said that arrangements were made to order M-1 carbines and would I be willing to sign, and I told him yes.

Q What, if anything else, did he say about the arrangements?

A He said Jack O'Brien has been dropping by the J & J Shop daily discussing a transaction withthe owner pertaining to these weapons being purchased.

Q What, if anything else, did he say?

A He mentioned that --

MR. BRUCE: Objection to hearsay.

THE COURT: Overruled. However, I will take it subject to a motion to strike and subject t o connection as far as Mr. Jankowski is concerned.

The jury will bear in mind the defendant Jankowski was not shown to be present at this particular conversation.

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Q What, if anything else, was said by Mr. Frank Grady or yourself at that meeting?

A He said arrangements were being made at the J & J Shop pertaining to the purchase of M-1 carbines and Jack O'Brien was dropping by the shop daily talking with the owner.

Q Did he say what the arrangements were which were being made?

A Duffy and Jack O'Brien were very good friends. Duffy was a bus driver and he used to meet with him constantly pertaining to that and Jack O'Brien informed Duffy that the owner would be willing to sell M-1 carbines.

Q How do you know that?

A Because Frank Grady was in constant touch --

THE COURT: How do you know he is asking.

THE WITNESS: Frank Grady told me.

Q Did there come a time when you went to Yonkers with Tom Duffy?

A Yes. Thomas Duffy came --

Q Who, if anyone else, was present at that time?

A Martin Lyons.

Q Would you please tell the jury when that occurred?

A It was around March of 1970.

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Q Would you tell the jury, what, if anything, was done or said by yourself and Mr. Lyons and Mr. Duffy?

A Frank Grady told me there will be a meeting between myself, Frank Grady and Thomas Duffy and Martin Lyons and that they would come to Yonkers to make arrangements to purchase M-1 carbines. We were to meet them and follow them to the J & J Fish Shop.

Q What, if anything else, was said by Mr. Grady?

A That was the extent of what he said.

Q And who, if anyone, was present at that conversaton?

A Just him and I, Frank Grady and myself.

Q Where did that conversation take place?

A I believe it was in Frank's car.

Q Was that at a different time than the time when Mr. Grady told you that arrangements were made to purchase M-1 carbines?

A Yes.

Q Well, did you do anything as a result of the conversation which you have just told us about?

A Yes. We followed Tom Duffy and Martin Lyons up to Yonkers after to the J & J Gun Shop.

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Q Did you have a discussion and make this trip on the same day?

A Yes.

Q Would you continue to tell the jury what, ifanything, was said and done by those people on that day?

A Martin Lyons, myself, Thomas Duffy and Frank Grady entered the gun shop. Thomas Duffy and Martin Lyons went to the far end of the counter and they held a conversation with the owner that I couldn't hear because I was onthe other end of the counter, and I saw Thomas Duffy give the owner some money.

Q Do you recall how much money or did you see how much money it was?

A It was quite a bit of money.

MR. DURKAN: Objection, your Honor, to "quite a bit of money".

THE COURT: I will strike that out.

Q Please try to describe to the jury --

THE COURT: He can tell you whether it was green bills and the size of the rolls if he wants, but not to tell that it is quite a bit because that means different things to different people.

Q Do you understand what we are trying to get it?

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A He had a large amount of money in his hands, folded.

Q Would you please say how many inches was the stack?

A Four inches, I'd say, roughly.

Q Four inches thick?

A It was folded in half.

Q Could you show that by holding up your hands to the jury?

A The money was folded like that in his hands (indicating).

Q Could you turn your hands so I can see?

A Folded like that (indicating).

Q Indicating about an inch in thickness?

A Yes, roughly like that.

Q On the way to the J & J Bait Shop did you go directly from where you met Mr. Grady and began to follow the car until you arrived at the J & J Bait Shop?

A We went directly to the shop.

Q Did youpass Getty Square at any time?

A We were waiting in Getty Square for Thomas Duffy and Martin Lyons to show up.

Q What, if anything else, happened while you were in the store other than for you to see a conversation

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and to see some money given to the person in the store?

A That was the extent of it. Then we left.

Q What, if anything, did you do after you left?

A I went home.

Q Directing your attention to May of 1970 did you yourself eventually go to the store?

A Yes, I did.

Q Between the time when you saw Mr. Duffy give his money to a man inside the store and the time when you yourself went down to sign, did you have any other meetings with any of the people you mentioned about your signing for weapons?

A Yes. Martin Lyons stopped by, myself, Frank Grady and Martin Lyons stopped by the gun shop and Martin paid the owner quite a bit of money.

Q When was that?

A About a week before we were to sign.

Q You say that yourself --

A Frank Grady and Martin Lyons.

Q And who, if anyone else, was in the store after you entered?

A The owner was in the store.

Q Would you recognize the owner if you saw him

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again?

A It's possible.

Q Would you take a look around this courtroom and see if you see that individual in this courtroom?

MR. BRUCE: I am going to object to that, your Honor, as being misleading --

THE COURT: Your objection is overruled.

A Yes, he is sitting over there in the yellow shirt and brown jacket, next to the gentleman with the glasses.

Q Is that the individual that you saw Tom Duffy give some money to?

A Yes.

Q Now, referring to the occasion when -- may the record reflect that the witness has identified the defendant Jankowski?

THE COURT: Yes. May the record also indicate he is sitting next to the gentleman who made the objection.

Proceed.

Q Referring to the occasion about a week before you signed for a weapon, when you went to Mr. Jankowski's, was anyone else there besides yourself, Mr. Grady and Mr. Lyons and the owner?

A No. I think there was a little girl behind

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the counter, asI recall.

Q What, if anything, was said or done once you entered the store?

A Martin Lyons had a roll of money, it was $100 bills, 350 bills and $20 bills. It was well over $1,000 and he paid the owner.

Q What, if anything, was said at that time?

A I don't recall any conversation.

Q Was anything said about your signing for a weapon in the future?

A Yes.

Q At that time?

A Not at that time.

Q Before you actually signed for a weapon at the meeting which you just described, was anything said to you by the people about previously signing for a weapon?

A I don't recall.

Q When in 1970 did you eventually sign for a weapon?

A It was in May of 1970.

Q And where did you do that?

A I signed at the J & J Gun Shop on Yonkers Avenue.

Q Who, if anyone else,was present at that time?

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A Frank Grady, myself and the owner.

Q Would you please tell the jury what, if anything, was said and done by yourself and anyone else who was present?

A Frank Grady and I entered the gun shop and I went to the counter and I was shown the book to sign.

Q Who showed the book to you?

A The owner. I went to sign in the empty space and he corrected me. He said, "That's not the place to sign." He indicated two places I should sign the ledger. I filled my name, address and social security number out.

Q What, if anything else, was said while you were in the store?

A The owner pushed my hand away and told me not to sign in the space I was going to sign in. He pointed out certain spots on the register to sign. Frank Grady told me to pay attention and not to make any mistakes on this.

Q What, if anything else, was said while you were in the store?

A That's the length of the conversation I recall.

Q What, if anything, was done besides your signing for the book while you were in the store?

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A Nothing. We just left.

Q Did you ever pay any money to the owner of the store?

A No, I did not.

Q Did you ever see Mr. Grady on that occasion paying any money to the owner of the store?

A No, I did not.

Q Was any of themoney that was delivered in that store to the owner money of yours?

A No.

Q Did you ever see the weapons which you signed for?

A Not at that time.

Q Were the weapons which you signed for weapons which you purchased for yourself?

A No.

Q Who was the purchaser of the weapons which you signed for?

MR. DURKAN: Objection.

THE COURT: Sustained as to form.

A It was for the IRA.

THE COURT: You cannot answer. I will strike it out. The jury will disregard it.

Q What, if anything, did you do after you left

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the gun shop on the day when you signed for the firearms?

A We left the gun shop and continued on up to Yonkers Avenue, stopped at a bar, we entered, Frank Grady and myself, and he introduced me to Martin McCarthy, Luke Dalton, Jack O'Brien was there.

Q What was said at that meeting, if anything?

A He introduced me to Martin McCarthy and we had a small conversation. Then I was told that Jack O'Brien was refusing to sign. I became quite angry because he made arrangements in the first place. Everybody else was signing and he was backing out at the last minute. After the argument was over --

Q Tell the jury what you said to Mr. O'Brien.

A I indicated Luke Dalton had falsified his name on the register. He didn't put his real name when he signed and he was taking some chance and now youare backing out of signing. Finally he agreed to sign.

Q What, if anything else, was said by Mr. Grady or Mr McCarthy or any others present at that time?

A I don't recall.

Q What, if anything, did the people do who were there while you were stillin the bar?

A I didn't stay that long. Possibly fifteen, twenty minutes and I left.

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Q Were there ever any discussions with you by anyone about how you would explain not having the weapons you had signed for?

A Yes.

MR. DURHAN: Objection "by anyone".

THE COURT: "By anyone" in the presence of Mr. Grady.

Q Who did you have those discussions with?

A We had a meeting at the Chippawa Hall, Frank Grady, myself, Jack O'Brien and Sean Keenan was there, Willian Dennehy. I think that was the amount of people that were there.

Q Was Mr. Lyons there?

A Yes.

Q What, if anything or when was that meeting?

A It was after we had signed for the M-1 carbines.

Q Approximately how long afterwards?

A No more than a month.

Q What, if anything, was said or done by the people present at that meeting?

A Martin Lyons brought out a handful of receipts and he handed them out and he said for us to hang on to them in case anyone ever questioned us about signing for the weapons. He indicated that the names on the receipts

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were people that were deceased.

Q The namesof the people to whom the weapons were transferred?

A Yes.

Q And how many people were given receipts at that time?

A Myself, Frank Grady and Jack O'Brien.

Q Did yousay that Frank Grady received the receipt at that time?

A I'm pretty sure he did.

Q What, if anything else, was said besides what you just told us at that meeting about the firearms?

A That if we were ever questioned and brought in by the law for falsifying the information, that the Irish Northern Aid Committee would pay our fees and protect us.

Q Did there ever come a time when you saw the weapon which you had signed for?

A Yes.

Q When was that?

A A few weeks after we had signed Frank Grady and myself and Martin Lyons went up there on, I believe, a Saturday night. It was after 9:00 o'clock and the owner was still in the shop. We went to the door and he let us in.

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Q Which door did you go to?

A The front door.

Q What, if anything, did you do after you entered the store?

A The owner took us to the back and there were stacks of these M-1 carbines in cardboard boxes.

Q Any other customers in the store at that time?

A No. The store was closed.

Q What, if anything, did any of the people present do or say at that time?

A Martin Lyons, myself and Frank Grady took the M-1 carbines and loaded them in Frank's staionwagon and my car.

Q And how many M-1 carbines did you load in that way?

A Over 25.

Q What, if anything, did you do and what, if anything, was said after that was accomplished?

A Frank Grady and myself followed Martin Lyons past Tibbots Brook Park and up this hill to this residential area and we transferred the weapons in our car to Martin Lyons' car.

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Q What, if anything, happened after that?

A Martin Lyons left and that was the last I saw the weapons.

Q Do you know where Mr. Lyons took the weapons?

A I can only assume.

THE COURT: Don't assume. He put them in his car; is that what you said?

THE WITNESS: Yes.

THE COURT: Where in his car?

THE WITNESS: The back seat.

Q Do you know where he delivered the weapons?

A Not really, I can't say.

Q Anybody ever tell you where he delivered the weapons?

MR.DURKAN: Objection.

THE COURT: He can answer that yes or no.

A No, no one ever told me where he took them.

Q While you were in the store and being shown the weapons in the back room, what, if anything, do you recall Mr. Jankowski saying to anyone who was present?

A I don't recall any conversations from him at the time.

Q Did you ever return to Mr.Jankowski's again?

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A Yes.

Q When was that?

A A month after we took the carbines out I got a call from Frank Grady and he says that he had another fellow that had signed and I was to pick up the carbine.

So I went down to J & J and picked it up, brought it to my house and next day I gave it to Frank Grady.

MR. DURKAN: May we fix the month?

THE COURT: Yes, I would like to have it fixed.

Q Mr. Casey, do you recall the month when this happened?

A It was about June, the middle of June.

Q You say that you signed for the weapon in approximately May; is that correct?

A I signed for the weapons in May.

Q You said it was about a month after that that you picked up the 20 to 25 carbines; is that correct?

MR. BRUCE: Objection. He didn't say 20 to 25. He said 25.

THE COURT: Well, the jury will recall what he said. The objection to the question is overruled.

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Q Is that correct?

A Could you repeat the question?

Q Yes. How much time passed between the time you signed the firearms book and the time when you picked up the cartons of M-1 carbines?

A Approximately two weeks.

Q And how much time passed between that and the time when you picked up the one carbine?

A Another month.

Q So it was about a month and a half after you first signed?

A Right.

Q What, if anything, did Frank Grady say to you at the time you turned over the one carbine to him, that you have just described?

A I just gave it to him.

Q Do you know a man named Joseph Tierney?

A Yes.

Q Did there ever come a time when you yourself went to Joseph Tierney's house?

A I was over his house several times. Then there was an occasion when Sean, Tierney, Martin Lyons and Frank Grady went there.

Q How do you know that?

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A Frank Grady told me.

Q When did he tell you that?

A I don't recall exactly the date.

Q Do you recall the month?

A Possibly May.

Q In May of 1970?

A Yes.

Q Was this before or after you signed for your weapon?

A After.

Q Who, if anyone else, was present at that conversation?

A Just Frank Grady and myself.

Q Where did that conversation take place?

A I don't recall.

Q Would you please tell the jury what, if anything, was said at that time by Mr. Grady?

A Frank Grady told me that Sean Keenan was pretty pleased with Joe Tierney because he was such an expert at weapons, guns and reloaders.

Q Did he say anything else?

A Nothing other than that.

Q Did he say anything about where they had gone and met Mr. Tierney?

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MR. DURKAN: I object to the leading.

THE COURT: It is leading.

Did he say anything about where they met?

THE WITNESS: Yes, they met at Joseph Tierney's house.

Q Was anything else said at thattime that you can now recall?

A He mentioned that Sean Keenan, Martin Lyons and Joseph Tierney had a discussion over reloaders and guns and Sean Keenan got a kick out of how much Joseph Tierney was knowledgeable about weapons.

Q Did Mr. Grady ever tell you why they had gone over to Mr. Tierney's house?

A No.

Q Directing your attention to the summer of 1970, did there ever come an occasion when you went to a place called the Halfway House?

A Yes.

Q When was that?

A Summer of 1970.

Q Do you recall which month that was?

A July.

Q Do you recall where the Halfway House is?

A Yes, on Main Street in Yonkers, New York.

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Q Who, if anyone else, waspresent at that time?

A Frank Grady and myself.

Q Would you please tell the jury what, if anything, was said and done by yourself and Mr. Grady?

A Frank Grady and I entered the Halfway House, sat down and I had a beer, Frank had a soda. After several drinks the owner took us in the bakc and handed us a carton that contained pistols.

Q Do you know who the owner was?

A Yes.

MR. DURKAN: I am going to object tothis line of questioning. It is not relevant to the indictment here.

THE COURT: I would have to take an offer of proof as to this line of inquiry.

(At the side bar)

THE COURT: Perhaps I ought to take Mr. Carey's showing of what he intends to bring out.

MR. CAREY: The government was going to bring out subsequent similar acts; similar in fact, to those which are expressly mentioned in the indictment.

THE COURT: Did these come out of the J & J Bait store?

MR. CAREY: I don't know, your Honor. I don't

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think the witness knows.

THE COURT: These are pistols, not rifles?

MR. CAREY: Correct, your Honor.

THE COURT: I think I will decline to take it.

MR. CAREY: May I be heard on that, your Honor?

THE COURT: Yes, certainly.

MR. CAREY: If anything, the regulations regarding registration of handguns are more strict than those regarding registration of rifles.

Therefore, it is more probative of the intention of this particular defendant to skirt the regulations regarding the transfer of firearms.

THE COURT: I don't say you couldn't use it for rebuttal. But as far as I am concerned it is a subsequent similar act which is not sufficiently close to the conspiracy so that any juror could infer that it was in furtherance of the conpsiracy.

There is a prejudicial slopover as to Jankowski who is not shown doing anything unlawful with handguns. I believe it is inappropriate at this stage of the record and I decline to take it.

MR. CAREY: It is not so far removed from the

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conspiracy when it happened in July of 1970.

In fact, July of 1970 the same thing occurred again in Mr. Jankowski's store.

THE COURT: Anything for placing Mr. Jankowski's store during the period of the conspiracy which also involved Grady, I would take. But this is isolated.

MR. CAREY: Mr. Jankowski was fully aware of it, what Mr. Grady was doing. Mr. Jankowski does not have to know what was happening to be liable under that conspiracy.

THE COURT: Unless the guns are tied into the bait store, talking about the handguns, I decline to take it. Anything he did in the bait store I would certainly take.

MR. CAREY: This is not a conspiracy limited to 37 Yonkers Avenue, Yonkers, New York. It is a conspiracy limited to the Southern District of New York and in fact the entire world.

It does not matter -- the government is not limited to proving that all these things took place in Mr. Jankowski's bait store. Though it may prejudice him, that's typical of any conspiracy.

I think your Honor has heard many narcotics cases to know that conspiracies can go on for years.

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Particular individual members of that conspiracy, if found to be a member of the conspiracy by the jury, can be held for any act in furtherance of the conspiracy whether they knew it to exist or not.

This happened to be in July 1970, the same time Mr. Jankowski was dealing in illegal firearms.

THE COURT: I decline to take it.

MR. DURKAN: So we won't be coming back to the side bar, we received just before lunch, we received some new and additional 3500 material on this witness. I have gone through it as best I can in the time allotted. It is separate and apart from the 3500 we got on Sunday.

It addresses itself to certain incidents that this witness I presume is going to be asked about. From what I can gather it has to do with trunks.

MR. CAREY: There are three or four items mentioned in this witness' testimony where he and Mr. Grady or Mr. Lyons or all of them picked up trunks filled with rifles as well as boxes.

THE COURT: Trunks with rifles I would take.

MR. DURKAN: He doesn't know what was in them. That's why I say at this juncture, rather than have the thing come out and prejudice the jury --

MR. CAREY: One think which he and Mr. Lyons

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and Mr. Grady were handed which he said he didn't see inside of but were very heavy.

THE COURT: Where did he take it from?

MR. DURKAN: I'm not that familiar with it, your Honor.

THE COURT: I will look.

THE COURT: This sheet No. 13 suggests that this witness saw guns consisting of carbines placed inside a box or crate and then nailed at the top, and "Frank and I and him carried it outside." That is certainly admissible in this case.

MR. CAREY: Page 15, your Honor, carried over from page 14.

THE COURT: Is there any connection between this trunk and prior trunks or cases that this witness moved?

MR. CAREY: It is Martin Lyons' again.

MR. DURKAN: Your Honor, my reading of it is, from this information that we just got, that he -- I think he is going to testify to the fact that he helped move it out. Then it was outof his possession.

At a later time he says he saw Lyons and Grady putting something in a crate that he identifies as rifles or guns. I will take exception to any testimony

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on that unless they are identified as the guns that are the subject matter of this indictment.

THE COURT: Carbines I would take whether they are identified with this indictment or not but I am not going to take the handguns by themselves.

MR. DURKAN: On the trunks, your Honor --

THE COURT: See,his offer of proof on the trunk isn't clear to me. I know one trunk he saw filled and he saw it nailed up.

MR. DURKAN: A crate. The jury seems to be listening, your Honor.

THE COURT: I don't think they can hear us over here. I will instruct them not to listen.

MR. DURKAN: The trunk suggests transportation and any testimony about a trunk where he doesn't know what is in it and I think should be kept out because it is prejudicial.

THE COURT: I think it may have a circumstantial relevance here. You see, this may or the jury may well infer that these affairs with these trunks were conducted in a clandestine fashion. It is not this fellow's ordinary job to go down to the Bronx moving trunks. That is what you have a mover for. Here you have a man whose occupation is a plumber and he is down there moving these trunks.

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MR. DURKAN: We don't know what is in them.

THE COURT: That's a question for the jury. It's circumstantial evidence. I will take the trunks.

MR. DURKAN: Except.

(In open court)

THE COURT: Members of the jury, in order to expedite the trial and permit the Court to make rulings on points of evidence and points of procedure and legal questions, which have nothing to do with your function, it is customary for the attorneys to step over to the side of the bench and discuss the matters on which the Court is required to rule.

Now, I believe that this recent conversation was conducted quietly enough so that you could not hear any of it. That is our purpose. The things which are being discussed there don't concern the jury at all.

You must not pay any attention to it and you must not be affected in any way by the fact of such conferences.

By the same token I understand that sometimes an attorney will get a little bit enthusiastic and perhaps say something and if you happen to hear a word or phrase, I really hope you don't, but if you do I instruct you to put it absolutely out of your mind because you are here

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to decide the fact questions in this case. Whenever we are discussing questions of law and evidence over there, it is of no concern to you whatsoever. If you should happen to hear a word or phrase put it out of your mind entirely.

Go ahead, Mr. Carey.

Q Mr. Casey, directing your attention to the fall of 1971 did you have occasion to go to Sommerville Place in Yonkers, New York?

A Yes.

Q Please tell the jury when in the fall of '71 that happened?

A I believe it was in October.

Q Who, if anyone, was present at Sommerville Place other than yourself?

A Frank Grady and I drove up to Sommerville Place and Frank rang the doorbell and this fellow answered the door and led us down to the basement.

Q Do you know who the fellow was who answered the door?

A I don't recall his name.

Q Please tell the jury what, if anything, was said or done after you arrived in the basement.

A Went down to the basement and there were sheets

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of plywood and two by fours and he was putting together a large crate.

Q Who was?

A The owner of the house.

Q Continue to tell the jury what, if anything, was said and done at that time.

A He started building the crate. When the crate was finished, completed, he started loading weapons and ammunition inside the crate.

Q What kind of weapons?

A Carbines, rifles and handguns and ammunition.

Q Who was loading it inside the crate?

A Frank Grady, myself and the owner.

Q What, if anything, happened after that was accomplished?

A Nailed down the lid on it and Frank Grady and I carried it out the back with the owner, up the alley and into Frank Grady's stationwagon. It was a very heavy crate.

Q What, if anything, did you do after that?

A Frank dropped me off and he went on his way.

Q Do you know how many carbines and rifles were in that box?

A Quite a large box. It was ammunition besides

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and handguns.

THE COURT: Just answer the lawyer's question.

THE WITNESS: I don't remember the amount.

Q Was it more than five?

A Oh, yes.

Q Was it more than ten?

A Yes.

Q Was it more than fifteen?

A It's possible.

Q Was it less than twenty?

A Yes.

Q Approximately how large was the box in feet or inches?

A Approximately three foot high and approximately six feet long.

Q When did you next speak to Frank Grady?

A The next day.

Q Where did you speak to him?

A I believe it was my house.

Q Approximately when the next day did you speak to him?

A In the afternoon.

Q Who, if anyone else, was present at that time?

A Just Frank and myself.

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Q What, if anything, did Frank Grady and yourself say at that time?

A Frank Grady told me when he dropped the trunk or the box of guns off the night before, that the box slipped and [illegible] Lyons grabbed it and he was so strong he practically lifted the box by himself.

Q Did there ever come a time when you went to an apartment house in the Bronx?

A Yes.

Q And when was that?

A I believe that was in '71 also.

Q Do you know which part or time of '71?

A Could have been the summertime. I believe it was the summertime.

Q Who, if anyone else, went with you?

A Frank Grady and myself went down.

Q And who, if anyone, did you meet there?

A Jack Lynch.

Q Would you please tell the jury what, if anything, you, Mr. Grady, Mr. Lynch said or did at that time?

A We went into the basement and I noticed two trunks in the far corner of the basement. One was stenciled to a priest in Ireland. There was an address on it. It was loaded with weapons. The handguns I saw --

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MR. DURKAN: I object, your Honor, to anything he is assuming unless he saw it.

THE COURT: Well, he knows he is only to tell what he knows, not what he assumes. You will have a chance to cross examine.

Q Please tell the jury what you saw and what was said at that time?

A I saw two trunks in the basement, one opened and one was closed. The one opened was full of rifles and handguns. It had a stenciling on it. It was addressed to a priest in Ireland.

Q Do you know approximately how many rifles were inside that trunk that was opened?

A It was filled to the top.

Q Were there more than five?

A Yes.

Q More than fifteen?

A Yes.

Q Were there more than twenty?

A Yes.

Q More than thirty?

MR. DURKAN: I object. If he knows how many he knows.

THE COURT: He is giving you his estimate. He

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may do that.

Can you give us an estimate?

THE WITNESS: I would say about twenty.

Q What, if anything, was said at that time?

A I don't recall any conversation.

THE COURT: What did you do down there?

THE WITNESS: We went to see Jack Lynch about something. I don't recall what it was about.

Q Did you do anything with the two trunks?

A No, I did not.

Q Did you or Mr. Grady or Mr. Lynch do anything with the two trunks while you were there?

A No.

Q Directing your attention to the fall of 1971 did you ever have occasion to see any other trunks?

A No.

Q Did there come a time when you and Mr. Grady and Mr. Lyons drove somewhere?

A Yes. We went to the Bronx.

Q When was that?

A Pardon?

Q When was that?

A I think it was the fall of '71, and Frank Grady, Martin Lyons and myself drove down to the Bronx.

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I don't recall the area, but when we got to where we were going we unloaded this trunk from the back of a car. It was very heavy.

Q Trunk from the back of whose car?

A A truck. There was a truck parked there. We carried this trunk into this fellow's apartment house and then we left.

THE COURT: What hour of the day was this?

THE WITNESS: At night, your Honor.

Q Who were the people present at that time?

A Frank Grady, myself and Martin Lyons.

Q And what is Mr. Lyons' profession, if you know?

A I believe he's a plumber.

Q And what is Mr. Grady's profession, if you know?

A He's an electrician.

Q Did anybody tell you whose house this was that you were carrying the trunk into?

A No.

Q Did anybody meet you in the house?

A Yes. The owner of the apartment.

Q What, if anything, did he say at that time?

A We brought the trunk --

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MR. DURKAN: I object to what somebody said, your Honor.

THE COURT: Well, if the person whom this witness has referred to is the owner of the house and said anything in the presence of Mr. Grady, the witness may testify to what he said. We don't know if he is the owner or not but he is the person you met there; is that what you are telling us?

THE WITNESS: Yes.

THE COURT: You may say what the person said if Mr. Grady was present when he said it.

THE WITNESS: I don't recall any conversations at that time between myself and the owner of the house.

Q Were there any conversations before you went to move this trunk between yourself, Mr. Grady or Mr. Lyons?

A Yes. Martin Lyons told us that we had to move a trunk full of weapons into this fellow's apartment.

Q When did that conversation take place?

A While we were driving down there.

Q Did there ever come a time when Frank Grady asked you to pick up any other weapons?

A Yes.

Q When was that?

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A 1971, I believe.

Q What time in 1971?

A October.

Q What, if anything -- who, if anyone else, was present at that time?

A Frank Grady called me on the phone and informed me that I would have to go down to the Tyrone House and pick up a shotgun.

Q What, if anything, did you do as a result of the conversation?

A He gave me a description of the fellow I was to meet and left for the Tyrone House and picked up the shotgun and several boxes of ammunition.

Q What, if anything, was said by yourself or the person from whom you picked up the shotgun?

A We didn't have a long conversation --

MR. DURKAN: If your Honor please, I object to any conversation if Mr. Grady isn't there.

THE COURT: Has it been established who was there?

Q Do you know the person who was there?

A I don't recall his name.

THE COURT: I will sustain the objection.

Q What, if anything, did you do with the shotgun

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and the ammunition which you picked up on that occasion?

A Brought it over to Frank Grady's house.

Q Did you deliver it to anyone at that time?

A I wasn't home at the time and when I dropped it off I had it wrapped in a cloth and he called me the next night and he really was angry with me for bringing it over like that.

Q What, if anything, did you say during that conversation when he called you?

A I told him I didn't want to keep it in my house and didn't want to leave it in the trunk of my car. That's why I dropped it off at his house.

Q What, if anything, did he say to you in response to that?

A I don't recall the conversation after that.

Q Did you ever have any other conversations with Mr. Grady about Mr. Lyons?

A Yes. He told me that Martin Lyons dressed up as a priest one time and went down to the docks to ship two trunks to Ireland.

Q And how were they shipping the trunks to Ireland?

A How were they shipping them?

Q How, yes.

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A By ship.

Q When did you have this conversation with Mr. Grady?

A Sometime in '71.

Q Do you recall when?

A I believe it was around August.

Q And who, if anyone else, was present besides yourself and Mr. Grady at that time?

A Just him and I.

Q Where did you have that conversation?

A I don't recall.

Q Did you ever have any conversations with Martin Lyons himself after that?

A Yes, I had conversations with Martin Lyons.

Q When was that?

A I spoke to him often. I used to go down the Irish Northern Aid Committee branch down in the Bronx and had conversations every time I met him.

Q Did Mr. Lyons have any or was he a member of the Irish Northern Aid Committee in the Bronx?

A Yes.

Q Did he have any position with that committee?

A I don't believe so.

Q Did Mr. Lyons ever tell you about any trips

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he had taken?

A Yes.

MR. DURKAN: Objection.

THE COURT: I will take it subject to connection.

A Yes, he did.

Q When was that discussion?

A I don't recall exactly when the discussion was taking place but he was joking about he had made a trip to Ireland to visit with the IRA soldiers that were in the hills and he was making a joke about how he couldn't climb up the hill as quick as they could.

THE COURT: The members of the jury will recall this particular testimony is not said to have occurred in the presence of either defendant. I will instruct the jury later on as to how you treat such matters.

Q Did there ever come a time when anyone ever told you what happened to the weapons which you had signed for?

A Yes.

MR. DURKAN: I object to what anyone told him.

THE COURT: This is a preliminary question. Who do you have reference to? When and where did you tell him and who was present?

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Q When did you have that conversation?

A I had the conversation in '71, I believe.

Q Do you recall what part of 1971?

A It was around the wintertime.

Q Who, if anyone else, was present at that time?

A Frank Grady and myself.

Q Tell the jury what, if anything, Frank Grady and yourself said or did at that time.

A He pointed to a newspaper article, Daily News I believe it was, and he said that -- he pointed to a photo in it, in the article, and says, "There is one of the carbines that was signed for."

Q Do you recall what the caption of the article was?

A It was something to do with the IRA.

Q What, if anything else, was said at that time?

A I don't recall anything beyond that.

Q I show you Government Exhibit 18 for identification. Can you identify it?

A Yes. This is the article I was referring to.

Q And this is a photocopy of that article. Have you ever seen -- have you recently seen the article itself?

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MR. BRUCE: I object unless it is used properly to refresh his recollection.

THE COURT: He is attempting to ascertain whether this is the article or a copy of the article that this witness saw. That is permissible. It is taken subject to connection as to your client, Mr. Bruce.

Q How do you know that is the article?

A Because that photograph stands out pretty clear in my mind because Frank pointed to it and said, "There is one of the M-1's that was signed for."

Q Have you ever seen the piece of paper itself, aside from the time you were at Frank Grady's, on which this article was printed?

A Yes, I did.

Q When was that?

A Down the News Building.

Q When was that?

A Several weeks ago.

MR. CAREY: The government offers Government Exhibit 18 in evidence.

Withdrawn. I have one question to ask.

Q Is this photocopy an accurate and complete photocopy of that paper that you saw at the News?

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A It was a page of the paper.

Q Is this a complete and accurate photocopy of that page of the paper which you saw at the News?

A Yes, it is.

MR. CAREY: The government offers Government Exhibit 18 with respect only to the first photocopy attached to it.

THE COURT: As I understand it, the newspaper will not be received as truth of any statement contained in the newspaper. A newspaper is not evidence. It is merely offered as being the paper which this witness says that Mr. Grady pointed to at the time of the conversation referred to. Not for the truth of the article. You may not consider the contents of the newspaper article any evidence of anything.

MR. DURKAN: May we have a side bar? If your Honor pleases, maybe we could have a recess because this may be lengthy.

THE COURT: Members of the jury withdraw to the jury room for a brief recess.

(Jury leaves the courtroom)

THE COURT: Hand up the newspaper.

(Pause)

THE COURT: What is the application?

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MR. DURKAN: Your Honor please e exhibit which has just been proferred by the U.S. torney's office has only one purpose, can only have one purpose, and that is absolutely to inflame and prejudice this jury against my client.

As your Honor will see, apart from the headlines inside the IRA with the bomb and the bullet, and IRA bomb ravage, and so on and so forth, we have a picture of a shadow that looks like a gun silhouetted against what is obviously -- at least it is portrayed in that thing, as an exploding bomb or some kind of exploding something or other.

Now, to permit that into evidence as proof of anything, the whole piece of testimony that Grady, "That's one of our guns"; other than the outline and shape of a gun you can't make out what it is.

THE COURT: Don't you think that outline would mark that as an M-1 carbine, that magazine they had on those? If the jury believes this testimony the newspaper article verifies or corroborates the truth of this witness.

It would be admissible no matter what it says. I have already instructed the jury you can't take anything in the newspaper as being evidence.

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MR. DURKAN: I understand, your Honor. But I think the mischief that can be caused and will be caused by the admission of that photograph to this jury, considering the accumulation of notariety that the situation in Northern Ireland has had over the past five or six years, to permit that photograph to go in as any probative value as to went over, we have at this point no proof yet that the guns they bought in the gun store, and I submit, your Honor, I don't think they were M-1 carbines. They were sports models.

To permit this in as M-1's going to Ireland or any other place is highly prejudicial.

THE COURT: Let me ask you this: The thing that made it admissible, assuming this witness is telling the truth, is when the defendant pointed to it and made the remark that he made. That makes it admissible.

If it solves the problem in some fashion to redact the news article itself, I'd be willing to have the news article redacted. But this is important testimony because it shows it's an admission of this particular defendant, if you believe it, that he told this witness what he told him and the newspaper, the fact of its issuance on November 28, 1971, is highly probative.

I agree that the news article about a bomb

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spree and about where the police ralley venture and all of this other colorful material, is not properly before this jury.

I am willing to redact the news article if need be, but I think the admissibility of this is about as clear as can be.

MR. DURKAN: If your Honor pleases, I would like to further point out, and I will tell you this:

When I took a look at that photograph two minutes ago, the first thing I thought was it was a British Army soldier. I think that is what it was. I think the Daily News have gone off with their imagination, and they have a good one, and they have a British soldier kneeling at the corner of the street.

THE COURT: Don't they have helmets anymore, the soldiers?

MR. DURKAN: The Scotch Forresters have a beret with a tassel on it.

MR. CAREY: Your Honor, may I be heard?

THE COURT: I think the admissibility is quite clear, Mr. Carey.

MR. CAREY: I have prepared a redacted copy of the article, your Honor. It includes only the photograph.

What I would like is to have a stipulation,

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before I consent to use this alone, to the fact that the article was dated on the date indicated in the article or printed on that date.

THE COURT: If you attorneys were a little more harmonious and gracious with each other you would work these things out in advance and save time.

I would redact the news part of it but I think the admissibility of it is quite clear. I will explain to the jury I have cut out the news article with scissors because it is none of their business.

MR. DURKAN: Your Honor, I wouldn't belabor it but I don't think I can let it go. My first impression in looking at this is there is an explosion or fire or something in the background. That is, there is no question in my mind, that is going to inflame this jury and this defendant hasn't a chance of a snowball in hell of getting a fair trial if that goes in.

MR. BRUCE: I join in my brother's position as stated to the Court. Even more so, a fortiori , since this basis of the admissibility of this newspaper article seems to be predicated on the fact that the defendant Grady pointed to it, it certainly does not bring my client into the situation.

Jankowski is being tried jointly with Mr.Grady.

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I don't see how the Court, in the interest of allowing this man a fair and impartial trial, can allow that to go in because there will be no control that the Court will be able to control the minds of this jury by redacting the article.

THE COURT: If your man is found by independent evidence to be a member of this conspiracy and if state - ment made by Mr. Grady is in furtherance of this con- spiracy, you will or your client will be bound by it.

I can't come to that until I come to your motionto strike at the end of the case.

It seems to me, if you believe this case, these people have been recruited to go carry trunks, help nail boxes move them on and off trucks and this statement made to them may be in furtherance of the conspiracy. I am not ruling that but I consider it as a possibility.

MR. BRUCE: The guns that have been allegedly taken from Mr. Jankowski's shop have not been identified that clearly to show that that which is in that picture, even by the defendant assuming that the defendant Grady did point to that, there has not been sufficient identifi- cation of the so-called weapon to show that it is an M-1 carbine.

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In fact it is an M-1 but an M-1B, and there is an essential distinction between an M-1 and M-1B carbine, essential difference.

I say that has not been established to show that if that is going to be allowed, that if Grady is alleged to have pointed to that, that that is what he knew actually what he was looking at to be that which came from the shop of Jankowski.

THE COURT: That only goes to weight. If he pointed to a hippopotamus, it would become admissible.

I think we will withhold the submission of this to the jury to see if you can't work it out in some matter that is not inflammatory.

If there is a problem about the picture, perhaps some statement for the record can be made for the jury or some statement of the date of the newspaper and the picture shows a person with the silhouette of a long gun --

MR. CAREY: In the interests of avoiding any question on appeal of prejudice as a result of this article, I would be happy to have your Honor admit the newspaper article on the condition that it not be shown to the jury and on the condition that the government is permitted to say to the jury that there is a photograph

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in the Daily News in an article relating to the IRA purporting to have been taken in Northern Ireland and that the article appears in the newspaper dated November 28, 1971. That is the only purpose for which the government offers or that is the full extent to which the government wishes to offer this particular exhibit.

THE COURT: You see, you can't preclude them from showing that this is not a silhouetted gun of this particular model gun.

MR. CAREY: I have no objection to showing this photograph to the jury.

MR. DURKAN: I have no doubt he has no objection, your Honor, but I still --

THE COURT: If he got rid of the prose it wouldn't be that bad a picture.

MR. DURKAN: A picture going in from the Daily News of whatever it was in 1971, even though for the moment let us assume that Mr. Grady said, "That's one of ours".

Your Honor, the damage caused by that offhand remark, you can tell by looking at it nobody on God's earth can identify whose gun it is, where it came from, from Jankowski, was it taken from the British.

THE COURT: That doesn't effect the issue

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before me.

MR. DURKAN: To let it in you would then establish, you establish what Mr. Carry is wrestling with, and that is export. That is the whole purpose of it.

THE COURT: If that statement is believed they may find he aided and abetted in exporting.

MR. DURKAN: Then, your Honor, the statement is in, insofar as that is in. To let this photograph in with all the inflammatory things it shows would be prejudicial.

THE COURT: Would you be prepared to proceed for the time being in accordance with Mr. Carey's suggestion?

MR. DURKAN: If it has anything to do with the photograph going in I wouldn't go along with it.

MR. CAREY: The government does not withdraw its offer of the article into evidence. However, it has no objection to the Court limiting the use which the government can make of that particular article to now showing it to the jury, number one; number two, to allow the government to say that there is a photograph in the newspaper article which shows the silhouette of a rifle or long gun, or whatever; that the article purports to

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be one about the IRA and the picture purports to be one taken in Northern Ireland; and that the article and photograph appear in the Sunday News, I believe it is, dated November 28th, or whatever the appropriate date is, 1971.

THE COURT: Mark that point in your notes. Put a paper clip on it so we donn't lose it.

For the time being that may not be an unreasonable way to proceed. That's without precluding anybody from looking at the picture, which is 18-A for identification, and saying that in his opinion or judgment that is not an M-1 model B, if you want to do that.

Are you willing to proceed in that fashion?

MR. DURKAN: No. I respectfully decline to proceed in any fashion that has that photograph in evidence.

THE COURT: In that case I overrule your objection. I take Exhibit 18 in evidence and I am going to take scissors and cut out physically before this exhibit is given to the jury the news article prose that begins with the words "Belfast is a tortured city," and also the paragraph or entry which begins with the words, "The Irish Republican Army went on a bomb and bullet

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rampage."

I'm cutting those out but I would permit the top of the page and its date and the headline and the picture in.

MR. DURKAN: If your Honor pleases --

THE COURT: You had your chance, you know. If you don't want to make a reasonable accommodation. I think it is relevant.

MR. DURKAN: I don't think there can be any reasonable accommodation with that photograph. There is also a caption underneath.

Is your Honor including that in?

THE COURT: Yes, I will take the prose out. I think the top part of the headline I would take on request. If the government wants to limit itself to Exhibit 18-A for identification, it can do that, too.

MR. CAREY: Your Honor, it is necessary that the government be able to argue from the exhibit that it purports to be a picture taken in Northern Ireland and purports to be an article relating to the IRA.

THE COURT: The headline shows that, doesn't it?

MR. CAREY: I would have to look at it again, your Honor.

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THE COURT: I don't think we have to do anything with it at this moment.

MR. CAREY: Yes, it does. Including the word "Belfast" which appears before the article itself.

THE COURT: I think that purposely prose ought to go out. It is not evidence of anything.

MR. CAREY: No objection to that, your Honor.

THE COURT: All right. We will take a brief recess. Anything else that has to be covered at this time?

MR. CAREY: No, your Honor.

MR. BRUCE: If the Court pleases, may I take a look at that exhibit?

THE COURT: This is not to be shown to the jury at this time. I think you had better make an extra copy of it, Mr. Carey, so there can be a redacted copy made.

MR. CAREY: I will do it.

THE COURT: Have it professionally done so it is equally easy to read, not a xerox.

MR. CAREY: Would your Honor have any objection to cutting out those portions which you wished excised and preserving them?

THE COURT: I think it is premature to do

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that now but I will look at it again before it is even flashed before the jury.

(Recess)

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RDjw 1 Casey - direct

(In open court - jury present)

THE COURT: You may resume, Mr. Carey.

MR. CAREY: Do I understand that the last exhibit has been received in evidence?

THE COURT: Solely with respect to the dateline of the newspaper and the picture. The news article is not evidence of any truth whatsoever of the content thereof.

You are not to speculate about what was in the news article. Newspapers are not evidence.

CONTINUED DIRECT EXAMINATION

XXXX

BY MR. CAREY:

Q Mr. Casey, you stated earlier that you received a document showing you had transferred the weapons which you had signed for.

A Yes.

Q I show you Government Exhibit 10 in evidence. Can you identify that?

A Yes. This looks like the receipt that I received up in the Chippawa Club.

Q Is that the one you received?

A That's not the one. It's similar to the one I received.

Q I show you Government Exhibit 9 in evidence and I direct your attention to pages 8 and 9.

Can you identify that?

A Yes. This is the book that was in the gun shop that I signed.

Q How can youidentify that?

A My signature is here, also here.

Q Indicating two lines on which appears the name John M. Casey; is that correct?

A That's correct.

Q Mr. Casey, I direct your attention to Government Exhibit 9-A. Would you please show the jury where on Government Exhibit 9-A your name appears.

A Right here and again here.

Q Indicating two lines on which appear the names John M. Casey; is that correct?

A That's correct.

Q Which portions of the top line from left to theright side of this chart did you yourself complete?

A I did none on that side. I just signed my name and address and social security number, height and weight.

Q Did you complete the date to the left of your name?

A I did not.

Q From that portion to the left-hand margin you

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did not write anything; is that correct?

A I did not.

Q With respect to the second line where your name appears, which portion of that line fromthe left margin to the right margin did you yourself complete?

A None.

Q I'm referring to the pages 8 and 9 at the same time.

A None on the left. I just signed my name, address, social security number, height and weight.

Q Referring to the second line where the date appears did you put in the date?

A No.

Q How many times did you go down to or on how many different days did you go to the gun store and enter your name on this particular document?

A One day.

Q I direct your attention to the fact that May 6th appears to the left of your name the first time it is entered and May 8th appears next to your name the next time you entered.

A I signed both times on one day.

Q Were those dates entered at the time you wrote your name in the book?

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A Not that I recall.

Q Do you know who entered those dates in the book?

A I have no idea.

Q Is the information which you entered in there truthful?

A My name, address, social security number, yes.

Q Have you ever purchased or paid Mr. Jankowski for anything?

A No.

Q Has Mr. Jankowski ever sold anything to you?

A No, he did not.

MR. CAREY: No further questions of this witness, your Honor.

CROSS EXAMINATION

BY MR. DURKAN:

Q Mr. Casey, if I may, let me direct your attention back to the time, let's say the twelve months before May of 1970 when you signed your name in that book.

A Yes.

Q Were you active in what is commonly known as Irish affairs in Yonkers?

A Not prior to early 1970, no.

Q Well, is it a fact that sometime prior to

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May of 1970 you became increasingly aware of the tragedy in Northern Ireland?

MR. CAREY: Objection. There is no evidence of any tragedy other than what everybody knows.

THE COURT: He may answer the question.

Q Did you become aware in the months prior to May of 1970 of the conflict going on in Northern Ireland?

A Yes.

Q And from what you read and what you heard were your sympathies excited on behalf of the minority in Northern Ireland?

A Sympathies on behalf of the Irish people have been part of my life. My father, mother, grandparents --

Q Your father was a member of the IRA?

A No, he wasn't.

Q Can you tell us in these months, coming up to May 1970 as you read the newspapers and looked at television, did you identify with and feel compassion for the minority in Northern Ireland?

A Yes, I did.

Q And as a result of this feeling which you had -- by the way, did you feel they were getting a raw deal?

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A Yes.

Q Did you feel they were out-gunned and out-numbered?

A Yes.

Q Did you feel they needed help?

A Yes.

Q Did you know of anybody who was helping them?

A Yes.

Q I mean did you know of somebody else who was helping them other than what you planned to do yourself?

A Not to my knowledge, no.

Q So, sir, coming up to May of 1970, having been concerned with your own family's background and your heritage, you made a decision at some stage to help out in Northern Ireland; is that a fact?

A That's true.

Q In connection with this particular desire to help is it also a fact that you and a group of men, whose names you have mentioned here, decided that you would purchase guns to ship to Northern Ireland; is that a fact?

A That wasn't my plan. I had no arrangements for purchase.

Q Well, didn't you know, sir, coming up to May of 1970, and in particular up to May 8, 1970, that there

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was a plan to buy guns fromthe J & J Bait & Tackle Shop in connection with the causes in Ireland?

A Yes.

Q And, sir, with that knowledge and armed with that knowledge you willingly became a part of it; is that correct?

A Yes.

Q As a matter of fact you had to use a little strong talk on Mr. Jack I'Brien to get him to sign; isn't that so?

A Yes.

Q You were the one who had to change his mind from not signing to signing?

A Yes. He made the arrangements.

Q O'Brien was backing out and you decided you weren't going to let him back out; is that correct?

A Yes.

Q Anybody else want to back out?

A Not to my knowledge.

Q So feeling as you did you became part of a plan to purchase guns from Jankowski's Bait Shop; is that correct?

A Yes, that's correct.

Q Now, sir, in order to buy those guns somebody

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or some person or persons had to present themselves to comply with the regulations of the Federal Firearms --

MR. CAREY: Objection, your Honor. Calls for a legal conclusion.

THE COURT: Sustained.

Q Were you aware --

THE COURT: If he was toldanything, he may be asked what he was told about regulations.

Q Were you told, were you advised that in order to bring about a purchase --

MR. CAREY: Objection, your Honor.

THE COURT: He hasn't finished his question.

MR. CAREY: He seems to be placing in his question a statement of the law.

THE COURT: He can't have any questions of law, but if somebody told this witness something he may be asked what he was told. Don't be leading. Frame a new question.

Q Mr. Casey, were you told that in order to purchase a gun or rifle in Yonkers back in 1970 that a person had to present himself and give certain or do certain things such as identifying himself and signing his name,and so forth?

Were you aware of that?

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A Yes.

MR. CAREY: May we find out who told him that and when?

THE COURT: You will have a chance on redirect examination.

Q You certainly told Mr. O'Brien, didn't you, that's what had to be done?

A Yes. He was aware. He made the arrangements.

Q Martin McCarthy was aware?

A Yes.

Q And Mr. Lyons was aware?

A Yes.

Q Mr. Grady was aware?

A Yes.

Q And any of the other men whose names I haven't mentioned who were part of this plan all knew that the important thing was that you had to present yourself and identify yourself legitimately and clearly and truthfully in order to buy a weapon?

MR. CAREY: I object to what they knew.

THE COURT: I will sustain this objection. He may be asked as to what he knew or what he was told.

Q You knew, sir, or you were told that this was necessary in order to bring about the purchase of a weapon

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back in May of 1970?

A Yes.

Q And this was a purchase that you and some of the others had decided to make some weeks before that?

MR. CAREY: Objection, your Honor. The witness has testified he had no plans to make a purchase.

THE COURT: He can answer it again.

A I did not purchase any weapons.

Q I didn't ask that, Mr. Casey. What I am asking you is going back to whenever the plan was developed, you knew, did you not, that in order to effect that plan that a person or persons had to present themselves and give true identification and sign a book?

A Yes.

Q Inorder to bring about that purchase?

A That's correct.

Q Sir, fully cognizant of that fact and fully cognizant of what you had to do, you went and did it, did you not?

A Yes.

Q And you had to use a little persuasion with O'Brien but you used and he did?

THE COURT: We have had several times about O'Brien. He persuaded him. Let's go on.

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Q McCarthy, did he sign, too, if you know?

A Yes, he signed.

Q So the day came when you walked into the J & J Bait Shop and you presented yourself as a customer to the man behind the counter; is that right?

A No. He knew I wasn't a customer.

Q You walked in, did you not?

A Yes, I walked in the store.

Q You walked in and up to the counter?

A Yes.

Q A book was produced?

A Yes.

Q And you knew, did you not, that O'Brien had been going there on a daily basis?

A Yes, he was.

Q And you knew arrangements had been made for the purchase of weapons, had you not?

A Yes.

Q And you signed the book at that time as a purchaser, did you not?

A I signed the book but I wasn't a purchaser.

Q And you signed your full and true name?

A I put my name and address.

Q You signed your address?

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A Yes, sir.

MR. CAREY: This version on interrupting the witness. He seems barely to be completing his answer.

THE COURT: I think all these questions have been asked and answered already. I do like to proceed promptly with the trial. I think the witness hears him all right. If the court reporter can't hear I'm sure he will raise his hand and tell you to slow down.

All this has been asked and answered. Next question.

Q So the day came when you signed your name in two places?

THE COURT: That even, too, has been asked and answered.

Q And following the signing of your name you continued in close contact, did you not, with the man who had formulated the plan with you; is that correct?

A I was a member of the Irish Northern Aid Committee.

Q I didn't ask you that, sir. Did you or did you not in the days and the weeks following May 8th of 1970 continue in close contact with the men that you had formulated this plan of purchase with?

A Yes.

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Q And there came a day, did there not, sir, when you went to the J & J Bait Shop -- will your Honor bear with me a moment?

THE COURT: Certainly.

(Pause)

Q As a matter of fact, sir, I believe you testified, sir, that money had been paid even before you went to sign your name, is that correct, in your presence?

A Yes.

Q By Mr. Lyons in the presence of Mr. Grady; is that correct?

A Mr. Duffy was first to pay or give the owner money.

Q And this was, if you know, sir, with the knowledge of the other men, if you know?

A I don't know if they were aware of it or not. I don't know, I can't say.

Q Is it a fair statement that they knew Jankowski wasn't giving guns for nothing?

A Yes, he was selling them for money.

Q He was selling them for money?

A Yes.

Q Now, then, following May of 1970 I think you told us that you, too, received a receipt?

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A Yes.

Q A transfer receipt?

A Yes.

Q And that transfer receipt, sir, indicated that you were the owner of that particular weapon that was listed on it?

A No. My name wasn't on that receipt.

Q Well, correct me if I'm wrong, but didn't you tell us that you too received a receipt about one month later?

A Yes, I received a receipt but my name was not on it.

Q It was not on it?

A No, it was not on it.

Q What did you do with that receipt?

A I signed the bottom part of it and I was told to keep it by Martin Lyons.

Q Well, when you say you signed the bottom part of it, did you sign as a transferor?

A It was a transfer.

Q It was a transfer?

A Yes.

Q A transfer of the ownership of the gun listed; is that correct?

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A Yes.

Q As a matter of fact --

MR. CAREY: Objection, your Honor, the question calls for a conclusion of law. The witness properly stated before it indicated there was a transfer.

MR. DURKAN: May I have that exhibit, sir, that you showed him?

MR.CAREY: Government Exhibit 10.

Q Government 10, which I believe is in evidence, and ask this:

Mr. Casey, this receipt which you got, and I am now referring to Government 10 which is admitted, having been signed by Jack O'Brien, certifies that"I,"in your case John Casey, "transfer ownership of the weapons listed" to somebody; is that correct?

A But I never owned them.

Q You do read English?

A Yes.

Q You know when you sign something that what's up above it you mean; is that correct?

A Yes.

Q So when you sign that this is to certify that I, John Casey, transfer ownership, you knew that, didn't you?

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A Yes, but the name on that receipt was the name of a deceased person. That name was on it when I received the receipt.

Q When you sign as a transferor, transfer ownership to somebody, whether dead or alive or not?

A Yes.

Q In fact, sir, by the existence of this receipt and the receipt that you got you were admitting the ownership of the weapon?

MR. CAREY: Objection, your Honor.

THE COURT: He may be examined as to his state of mind when he signed the receipt.

A I knew I wasn't the owner and I knew that the receipt was a cover.

Q Mr. Casey, you signed as the customer to bring about the purchase, did you not?

A I signed.

THE COURT: We have had that two, three, four times.

Q And then you signed a receipt as a transferor of the ownership; isn't that true?

A Yes, I did.

Q Now, following your signing of the transfer of ownership, and I don't know whether I went into this

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with you, but everytying you put down on there was true on that particular Exhibit 9-A?

A Yes, my name, address, social security, yes.

Q You weren't trying to deceive Mr. Jankowski, were you?

A He knew what was going on.

MR. BRUCE: I object to that, your Honor.

THE COURT: You ought to object a little earlier. I wouldhave sustained the objection.

The jury will disregard the question and the answer.

Q Mr. Casey, when you went in and filled in the information you were not trying to deceive Mr. Jankowski

THE COURT: Improper question and it is unfair to Mr. Jankowski, who will have a chance to cross examine this witness in a few moments. He already objected to it. I told him I would sustain his objection, Mr. Bruce that is.

MR. DURKAN: It was the answer I objected to and not my question.

THE COURT: All right.

MR. DURKAN: The answer was not responsive.

Q Mr. Casey, when you went into Mr. Jankowski that day you told the truth on what you wrote, did you

not?

A Name, address, social security number, yes.

Q Now, there came a time one week later when you and Mr. Grady and Mr. Lyons went at night to Mr. Jankowski's home.

A That's correct.

Q Did the others know you were going?

A I can't say if they did or not. I can't recall.

Q Well, is it a fair assumption, sir, that those who had signed as signatories had your approval to go there and collect the weapons that they had signed for as purchasers?

A The person never gave me approval.

Q Nobody said no, did they?

A I don't even know if they were aware of us taking them out of the store or not.

Q Mr. Casey, you know they knew they guns were being taken out, don't you?

MR. CAREY: Objection as argumentative.

THE COURT: I will permit the question to be asked.

A I did not know if everyone was aware.

Q Do you mean Mr. Casey, Mr. O'Brien didn't know

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the guns were going to be transferred out?

A He knew they were taken out.

Q Of course he did.

A Yes, he did.

MR. CAREY: I object.

THE COURT: Yes. The "of course he did" is argumentative and objectionable.

Q Mr. Dennehy knew the guns were being taken out?

A I believe he did.

Q And Martin McCarthy knew the guns were being taken out?

A I can't say if he did or not.

Q Can you tell us, sir, when you went there to bring out these guns, you brought out the guns, did you not, that had been signed for by these other men as purchasers; isn't that a fair statement?

A Yes.

Q So finally can we agree, Mr. Casey, that the guns that are listed on this particular exhibit finally at least came into the possession of people who had authority from the people who made the purchase?

MR. CAREY: Objection, your Honor. It calls for a legal conclusion.

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THE COURT: It does call for a conclusion. However, the jury may draw such an inference if this witness went and helped take them out of the store and if this witness testifies the other people knew he was going to do that.

The objection is solely to the form of the question. Frame the next question.

Q Now, when you got there that night would you describe for the Court and jury in what method or manner the guns were when you first saw them?

A They were in the back room of the store.

Q Were they lying around loose or were they in boxes or where?

A They were stacked on the floor.

Q In boxes?

A Cardboard cartons.

Q Did you open them up to look in to see what was in them?

A No, I did not. There was a drawing with an M-1 carbine on it with a Florida address on it.

Q Do you remember the name of the Florida address?

A No, not offhand. I remember Florida though.

Q Florida?

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A Yes.

Q Did you count the number of guns that you saw there that night?

A No, I did not count them.

Q I believe you told us, sir, that approximately there were 15 to 20.

A I said 20 to 25, roughly.

Q 20 to 25?

A Yes.

Q Tell us what you did when you saw the 20 to 25 guns stacked in the back?

A We took them out and placed them in our cars.

Q Whose cars did you put them in?

A Frank Grady's stationwagon and my car.

Q And you drove then to someplace I believe where you transferred them to Mr. Lyons' car?

A Yes. We followed Martin Lyons to Tibbots Brook Park to the hill area and took the weapons out of our cars and put them in his.

Q All of this you did willingly and voluntarily?

A Yes, I did.

Q Now, you mentioned a man named Tierney.

A Yes.

Q When you --

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THE COURT: Please use the lectern. Don't lean on the jury rail.

Q When you went to visit Mr. Tierney in May of 1970 was that after you had signed?

A I didn't visit Mr. Tierney.

Q I'm sorry. I believe you told us that you and Mr. Grady went to the Halfway House.

A Yes.

Q And where is that located?

THE COURT: Use the lectern.

A On Main Street, Yonkers, New York.

Q Now, after taking out those rifles, or what you described as being in boxes some 20 to 25 in number, did you ever see them again?

A No.

Q And, Mr. Casey, do I understand it correctly, that would be approximately one week, was it, after you signed that you went there?

A Two weeks.

Q About two weeks later?

A That's correct.

Q That was the last you saw of those guns?

A After they went into Martin Lyons' car, yes.

Q Now, Mr. Casey, you were first contacted by

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the government agents, were you not, some two years after this incident?

A Yes, I was.

Q And do you remember the names of the agents that came to see you?

A I remember one of the agents. I don't recall the other fellow's name.

Q Tell us the name of the one that you remember.

A Special Agent Murray Ike.

Q And di you have a conversation with Mr. Murray Ike at that time?

A Yes, I did.

Q Was the other agent, if you remember, Agent Quin?

A It could have been. I don't recall his name.

Q And did he inquire of you about the signing of your name in the record as shown here on Exhibit 9-A?

A Yes, he did.

Q And tell us, sir, what did you tell him?

A I told him I sold them to a fictitious person. I made up a story.

Q What story did you tell him?

A I don't recall exactly. I told him that I met a fellow in a bar and that he wanted to buy them and I

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sold them to him. I took him to the Bronx, he met me and I gave him the weapons and he paid me. It wasn't true. I made it up.

Q This interview with Agent Ike took quite a long time, did it not?

A I don't recall how long it took.

Q Well, where did the interview take place?

A At my house.

Q And how long approximately were the agents there before they left?

A I'd say an hour, roughly an hour.

Q Did you give them the name of anybody, the man that you say you transferred or you sold the guns to?

A No. He asked me if I had the receipt and I told him I had it and I couldn't locate it. That was the truth. I did have it but I lost it.

Q When you say the receipt you are talking about the one that you mentioned before?

A That was given to me by Martin Lyons.

Q Did you tell them that you went to the J & J Bait Shop and signed the book and purchased two guns, did you tell them that?

A Yes, I told them I signed.

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Q And what did you tell them youdid with the guns?

A I told them I sold them.

Q Did you tell them you took possession of the guns?

A Yes.

Q That wasn't true, was it?

A No, it wasn't true.

Q Did you tell them what you then did with the guns?

A Yes. I told them I sold them to this fellow I had met in a bar.

Q Would you tell the Court and jury in substance where you said you went and how --

A I told him I took them down, after I had spoken to this fictitious person, I took them down to the Bronx on Jerome Avenue and gave it to him and he paid me for them, which wasn't true.

Q Did you tell them that you could identify him by being the driver of a blue Rambler?

A Yes.

Q Did you give a description of the man to the agents?

A Yes.

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Q What description did you give?

MR. CAREY: I request a side bar at this time.

THE COURT: Is it necessary?

MR. CAREY: Yes.

(At the side bar)

THE COURT: What is your application, Mr. Carey?

MR. CAREY: My application is that the jury be instructed that with respect to questions asked based on an interview this witness had with the agents of the Alcohol, Tobacco & Firearms, that the jury may not consider statements contained in that report as truthful, as evidence of the facts stated therein but it may be considered for only certain other limited purposes.

THE COURT: I don't know that there is any need to instruct them at this time. This is cross examination solely for purposes of impeachment.

MR. CAREY: But, your Honor, I believe defense counsel is trying to create the impression that the story told the first time was told for the facts stated therein.

THE COURT: That's a question for the jury, isn't it?

MR. CAREY: It isn't. The just is not permitted to take a statement not made under oath.

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THE COURT: I think it is permissible cross examination, Mr. Carey.

MR. CAREY: I'm not saying it is not, your Honor.

THE COURT: I don't think I have to give any specific instruction to the jury at this time.

MR. CAREY: I believe the Rules of Evidence, your Honor, and I could get them later, show clearly that it may not be taken.

THE COURT: He hasn't offered the statement in evidence, you know.

MR. CAREY: The statement is being presented in evidence by the witness.

THE COURT: He is being asked whether he was asked such and such. I don't see any problem with this at all.

MR. CAREY: I'm not questioning whether the witness may be asked. I'm saying the jury must be instructed this statement cannot be taken as to the proof of facts.

THE COURT: You can ask him later whether the statements were true or false and even what his motive was for lying.

MR. CAREY: I wouldn't hold up the trial

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now by looking for it.

THE COURT: All right.

(In open court)

BY MR. DURKAN:

Q Mr. Casey, after you terminated or after the interview was finished -- by the way, can you pinpoint that interview for us in terms of time, if you can?

A What interview are you referring to?

Q The interview where Agent Ike and the other agent came to your house.

A Pinpoint time?

Q Yes.

A The amount of time we spent?

THE COURT: He is asking you about the date when it happened.

Q The date approximately.

A I believe it was around the fall of 1973.

Q Was that the first time they had come to visit you in this connection?

A Yes.

Q Did they come back a second time?

A Yes, they did.

Q When was that, approximately?

A About a year later.

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Q That would be the fall of 1974?

A That's correct.

Q Now, when they came back in the fall of 1974 did they inquire about the same things?

A Yes.

Q And can you tell us, sir, at that time did you tell them the truth or did you tell them lies?

A I didn't tell the truth.

Q You told them lies?

A Yes.

Q And how long did that interview take?

A Around an hour.

Q Did you sign any statement for them?

A No, I did not. Not that I recall.

Q Did the investigation have to do with substantially the same material as you had spoken to the first time, spoken about?

A Same material, yes. Talking about the same thing.

Q I see.

Now, following that second meeting in the fall of '74 did they have occasion to come around to see you again?

A I believe they did. Murray Ike came around

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again.

Q When was that?

A '75, I believe, 1975.

Q Do you remember when in '75?

A Early in the year. I can't recall exactly what month.

Q And at that time, sir, did you have a third conversation with Mr. Ike?

A No. He handed me a subpoena.

Q And the subpoena commanded your presence at some hearing in this courthouse; is that correct?

A Yes, at this courthouse.

Q That was a subpoena before the grand jury; is that right?

A No. To be interviewed by Mr. Carey.

Q Mr. Carey?

A That's correct.

Q And did you respond to that subpoena?

A Yes, I did.

Q And did you come in to see Mr. Carey sometime in early '75?

A Yes, I did.

Q Did you have a conversation with him?

A Yes, I did.

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Q And at that time, sir, will you tell us what you told him?

Withdraw that.

Did the conversation have to do with the subject matter of your signing for the guns?

A Yes.

Q At that time, sir, did you tell Mr. Carey the truth or did you tell him lies?

A No, I didn't tell the truth.

Q And what did you tell him about the subject matter that we are discussing here?

A I don't recall exactly.

Q Well, give us your best recollection.

A He asked the questions did I sign, did I agree to that? He asked some questions which I answered truthfully. I don't recall exactly the conversation. I don't recall it.

Q Well, did you tell him that you went two weeks after May 8, 1970, and picked up the guns, the 25 cardboard boxes?

A It's possible I may have.

Q Let me finish, sir.

Did you tell the U.S. Attorney on this, the third occasion, that you met with the government people,

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that two weeks following May 10th, or whenever it was that you signed, that you went that night and picked up the guns?

A No, I didn't tell them that.

Q Did you still continue to tell them the story that you told about driving down to the Bronx in the blue Rambler and meeting the man under the El?

A No.

Q What version of the story did you give them when you met Mr. Carey?

A I don't recall.

Q Well, give us your best estimate as to what story you told him on this, the third meeting, with the government people.

A I believe I told him I had signed and I was requested to sign and I don't recall the entire conversation.

Q How long did that interview take?

A Around an hour.

Q And that's all you told them in the course of an hour?

A I don't recal l the whole conversation.

Q Did you tell them about the crates that you have told us about here today?

A No, I did not tell them.

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Q Did you tell them about the ride to the Halfway House?

A No.

Q Did you tell them about the blue Rambler going down underneath the El in the Bronx?

A That didn't happen. I made that up.

Q But did you tell it to them on the third occasion?

A I don't recall.

Q Did you sign a statement at that time?

A I don't recall.

Q Now, did there come a time, Mr. Casey, when you were subpoenaed before the grand jury?

A Yes, that's correct.

Q By the way, can I ask you this, sir: On the first three occasions when you spoke to the government people, Agents Ike and his fellow agent the first time, Agent Ike again the second time, and Mr. Carey the third time, on any of those three occasions, sir, if you remember were you under oath?

A No, I wasn't, no.

Q Then finally we come to the grand jury appearance by you early last year.

A That's correct.

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Q Is it not a fact, sir, at that time you were under oath?

A Yes, that's correct.

Q At that time, sir, you swore to tell the truth?

A Yes, I did.

Q Just as you did today?

A That's correct.

Q You swore to tell the whole truth?

A Yes.

Q And nothing but the truth?

A Yes.

Q Will you tell this Court and jury, sir, did you tell the grand jury the truth, the whole truth and nothing but the truth on February 28, 1975?

A Not completely.

Q Not completely, sir?

A No.

Q Well, how much of what you told them was true?

A I didn't include about Martin Lyons and removing the weapons from the gun shop and I didn't include the handguns that were picked up at the Halfway House.

I also didn't include the trunks full of guns

I saw down the Bronx, all of that. Everything I have testified to today.

Q Can you tell us, sir, when the U.S. Attorney called you before the grand jury, did he advise you that if you didn't tell the truth you ran [illegible] to be subject to prosecution?

A Yes, he did.

Q By the way, have you received immunity from prosecution for your testimony today?

A No, I haven't.

THE COURT: Do you know what he means by "immunity"?

THE WITNESS: Yes, your Honor. That nothing will be done to me.

Q So that when you told him, when you told the grand jury in February 1975 that you were never present when Mr. Lyons discussed --

MR. CAREY: Objection. No proper foundation, your Honor.

Q Mr. Casey, when you --

THE COURT: The question would be do you recall being asked this question before the grand jury and giving this answer. You may bring out any answer he gave which is inconsistent with his testimony here today.

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Q Mr. Casey, in addition to not telling them about the Halfway House did you also fail to tell them about the crating that you mentioned here earlier today?

MR.CAREY: Objection, your Honor. No foundation laid that he was asked to give that information.

THE COURT: If that be so, I will sustain the objection on that ground.

His attention may be called to any question and answer he gave before the grand jury which was either false or inconsistent with his testimony here today.

MR. DURKAN: I'm merely asking him directly, your Honor.

THE COURT: Unless there is a showing he was asked he can't be impeached as to what he didn't tell the grand jury.

MR. DURKAN: I'm not referring to the minutes. I'm asking him directly now did he back on February 28, 1975, tell the grand jury and tell Mr. Carey about the visit to this house in Sommerville Place where he said he saw crates of guns.

THE COURT: You can separate the question as to whether he told Mr. Carey, I will permit it. But he did not impeach before the grand jury except questions that he was asked and answered falsely.

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There has to be a showing by asking him do you recall being asked this question and giving this answer. He may be asked whether he told Mr. Carey on that or any other day.

Q Was this question put to you, Mr. Casey, and did you give this answer --

MR. CAREY: May I have the page reference, please?

MR. DURKAN: JJP-2.

Q Mr. Casey, was this question put to you in the grand jury and did you give this answer:

"Q Have you ever been back to the J & J Bait Shop since the time when you signed for the two rifles?

"A No."

A I believe that's the answer, yes.

Q That was not true, sir?

A To the best of my ability at that time, no. No, it wasn't true.

Q You know today that it wasn't true?

A Yes.

Q Were you asked this question, "Have you ever met the man again that you met that time behind the counter?

"A No."

Was that question put to you and did you give

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give that answer?

A Yes.

Q Was that the truth or was that a falsehood?

A Falsehood.

Q That was under oath?

A Yes.

Q Will you tell us, is there anything you told us today under oath that is false?

A No.

Q All of it is true?

A That's correct.

Q Sir, following your fourth meeting with government agents, which would be on the occasion of the grand jury, did you have occasion to meet them a fifth time?

A Yes. Came down to the courthouse again.

Q When was this?

A Just recently. I believe last month.

Q And when you came down last month, sir, did you tell them the whole truth at that time?

A No, I did not.

Q So that since May of 1970 up until February of 1976 you have been telling lies about your association

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with this particular transaction that is the subject matter of this lawsuit; is that correct, sir?

A Yes, that's correct.

Q Every time a government agent approached you you told them a lie?

A Yes.

Q You did it once, twice, three, four, five times; is that correct, sir?

A Yes.

Q And the fourth time was under oath?

A Yes.

Q Before God?

A Yes.

Q And you continued to lie?

A There was a reason.

Q Mr. Casey, on which occasion finally in your meeting with the government people did you begin to tell what you say is the truth?

A Yesterday and today.

Q Yesterday?

A Yes.

Q Well, a couple of weeks ago when you were down to meet the government agents, who did you meet?

A I met Mr. Carey.

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Q Was that one meeting or more than one?

A More than one meeting.

Q How many meetings did you have with Mr. Carey?

A About four.

Q Does that include the one before the grand jury?

A No.

Q Does that include the one at the time of the grand jury ?

A I met Mr. Carey about seven times, eight times, something like that.

Q And do I understand it correctly, sir, that in all of these meetings stretching over the last six years, it was yesterday before you finally said you told what you considered to be the truth in this case?

MR. CAREY: Objection.

THE COURT: The objection is to the six years which assumes a state of facts not in evidence.

When did you first see Mr. Carey?

THE WITNESS: I believe back in 1974, your Honor.

THE COURT: '74, all right. Reframe the question.

Q Since 1974, sir, from whenever it was you

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first met Mr. Ike up until yesterday, which was March 8, 1976, is it a fair statement, sir, you never told the truth, according to your testimony, until yesterday?

A That's correct.

Q Are you, Mr. Casey, familiar with the term "statute of limitations"?

A No.

Q Mr. Casey, when you told us here today that two weeks after May 10, 1970 was the last you saw of the 25 rifles, was that true?

A Yes. Yes, it was.

Q Is it true now?

A Yes, it is.

Q There is no ground for you to change your mind about it?

A No.

Q Sir, did you ever see the serial number on the gun or guns that you signed for?

A No, I did not.

Q Did you ever actually see the gun itself?

A I saw the boxes they came in.

Q And the incident, Mr. Casey, that you referred to as having happened in the fall of '71 at Sommerville Place, do you recall telling us about that today?

A Yes.

Q And, by the way, do you know the owner of the name of the house on Sommerville Place?

A I don't recall his name.

Q Did you meet with him?

A Yes, I met him.

Q And were you introduced to him?

A Yes, by Frank Grady.

Q And did you participate in the loading of this particular crate that you say you saw was there that night?

A Yes.

Q I believe you told us that it was less than 20 guns.

A Something around there, yes.

Q When you say, sir, that it was the fall of '71, could it have been the fall of '70?

A No.

Q Well, what is there about the fall of '71, what is it about that fall of '71 that you recall was the time you went to Sommerville Place?

A I believe that was election year for our local union and that's why I recall it.

Q Election year for the local union?

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A My local union.

Q What union is that?

A Plumbers Local Union 209, Yonkers, New York.

Q And the guns that you told us you saw being put in a crate on that particular night, they were not the guns that you claim you signed for in Jankowski's shop, were they?

A No. These were old, used. Sort of had a little wear and tear on them. They weren't new.

Q Obsolete?

A Not obsolete. M-1 carbines, bolt action rifles, automatic rifles.

Q How far back in vintage? How far back in terms of year of manufacture?

A I have no way of knowing.

Q World War I?

A They were World War II vintage I would say.

Q And they were not the guns you signed for in Jankowski's?

A No. They weren't new.

Q Now, you told us that you went to an apartment house in the Bronx sometime following that; is that correct?

A Yes, we did go to the Bronx.

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Q Can you tell us when that was?

A I believe it was around the summer of '71.

Q When you say the summer, was it early summer, if you know?

A It was hot, warm weather.

Q You are not able to pinpoint the month?

A I can't really recall.

Q Was it as hot as it was last week?

THE COURT: For heaven's sake, let's move along with this trial.

Q Now, Mr. Casey, the trunks that you say you saw, one was open?

A Yes.

Q Did you see any of the cardboard boxes that you saw in Jankowski's store in those trunks?

A No.

Q And you said you saw something stenciled, a priest in Ireland?

A Yes.

Q Was that on the open one or closed one?

A The open one.

Q Do you remember the name?

A I don't recall the name.

Q Do you recall the address?

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A Galway, Ireland, I believe.

Q When you say stenciled, you mean that was --

A Painted on with a stencil. It was stenciled and painted on.

Q Do you know if that was a stencil -- was it an old trunk or new trunk?

A Fairly new trunk.

MR. DURKAN: Will your Honor bear with me for a moment?

THE COURT: Certainly.

(Pause)

Q Mr. Casey, you say Mr. Grady told you that Lyons dressed up as a priest; is that correct?

A Yes.

Q You remember that was August of 1971 that he told you that?

A It may have been around that time, yes.

Q Isn't that what you told us here on direct examination, that it was in August of 1971 that Grady made this statement to you?

A It's hard to recall the exact dates. I'm trying to give the best of my knowledge the dates when all these incidents occurred.

Q Well, throughout these years, 1970 and 1971,

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you had seen Grady many, many times, is that correct?

A Yes.

Q And, sir, do you say that the statement he made about Lyons dressing up as a priest was August of '71?

A Yes.

Q And you can remember that?

A Roughly around there.

Q Roughly around August of '71?

A Yes.

Q And then you went down, did you not, sir, to the Daily News with a member of the government some two or three weeks ago; is that correct?

A Yes.

Q That was because of the comments that you said Mr. Grady made about recognizing one of the guns?

A Yes.

Q And, sir, was the serial number, were you able to read it off the picture?

A No.

MR. DURKAN: I have no further questions.

THE COURT: Anything of this witness?

MR. BRUCE: Yes, I do, your Honor.

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CROSS EXAMINATION

BY MR. BRUCE:

Q These meetings that first took place, they took place at the Chippawa Club; is that right?

A Yes.

Q That was in Yonkers?

A Yes.

Q And the first time that you went to the Chippawa Club, Grady and O'Brien were present then; is that right?

A Yes.

Q Now, it was brought hom to your knowledge or was told to you that O'Brien was speaking to Mr. Jankowski about the pu~chase of guns; is that correct?

A Yes. That was brought to my attention, yes.

Q That was brought to your attention?

A Yes.

Q Do you know the extent of O'Brien's conversation and discussion with Jankowski?

A No. I had no way of knowing. I wasn't there.

Q And the only thing that you know is just what you were told; is that correct?

A Yes.

Q And as to any discussions that took place with Jankowski?

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A Yes.

Q What those discussions were you don't know?

A Yes.

Q The extent of those discussions you do not know?

A I know they were roughly about the purchase of M-1 carbines.

Q Were you ever present at these discussions?

A No.

Q Most of your meetings took place where in Yonkers?

A Chippawa Club.

Q And at those times that you were at the Chippawa Club and had these meetings as to the purchase of guns, was Jankowski ever there?

A No. Not to my recollection.

Q There came a time when you went to Jankowski's Store; is that correct?

A Yes.

Q How many times did you goto Jankowski's store?

A Went there when Tom Duffy and Martin Lyons was there, went to sign, and again when we removed the carbines.

Q Did there ever come a time when you went to Jankowski's store for the picking up one one carbine?

A Yes.

Q So it was three times you went to Jankowski's store?

A Yes.

Q Now, do you recall giving testimony at a grand jury proceeding involving this matter that is before the Court on February 28, '75, do you recall that, sir?

A Yes.

Q And on page JJP-2, in the middle of the page, do you remember this question being asked to you:

"Q Did you ever go back to the J & J Bait Shop since the time you signed for those two rifles?"

MR. CAREY: Asked and answered.

Q Did you give the answer, "No"?

MR. CAREY: It is the same question Mr. Durkan asked.

THE COURT: It isn't necessary to repeat any matters Mr. Durkan covered. Any evidence solicited by one attorney will be part of the record.

MR. BRUCE: Just so long as it enures to the benefit of my client.

THE COURT: Any evidence, no matter who brings

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it out, is evidence in the case.

MR. BRUCE: Thank you very much, Judge. I withdraw this line of inquiry.

Q Now, there came a time when you went to Mr. Jankowski's where you picked up certain crates. That is correct, is it not?

A Cardboard cartons.

Q Did you ever look into those cardboard cartons?

A No.

Q Were you able to see what was in those cardboard cartons?

A No.

Q You made no notations at all about what was in that carton, did you?

A It had a print of an M-1 carbine on it and a Florida address.

Q A print?

A A drawing.

Q As far as what was in that box you never saw?

A No.

Q As far as your knowledge is concerned it could have been nothing but dead wood in that box; is that correct, sir?

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A I didn't open the boxes. I assume there were M-1 carbines inside.

Q How long were these cartons that you removed from Mr. Jankowski's store in your possession?

A Not very long.

Q Well, tellthe Court and jury how long, if you can remember.

A No more than a half hour.

Q A half hour?

A No more.

Q And where did you deliver these cartons?

A Dropped them off andput them in Martin Lyons car.

Q Martin Lyons' car?

A Yes.

Q Was Mr. Jankowski present at that time?

A No.

Q When was the last time at that time that you saw Mr. Jankowski?

A I saw him again when I picked up the individual carbine.

Q At that time when you picked up the carton?

A I didn't see any anymore.

Q You had no conversation with him?

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A No.

Q He had no conversations in your presence with any of your compatriots?

A Not that I know of.

Q Did he or didn't he?

A I don't remember.

Q When these cartons were taken you put them in Mr. Lyons' car?

A That's correct.

Q Did you ever have occasion to see those cartons again?

A No.

Q So as far as you are concerned that was the end of whatever those cartons contained as to where they went and what happened to them; is that correct?

A They went to Ireland.

Q Sir, of your own knowledge do you know that they went to Ireland?

A No.

Q So as you sit there under oath the last time that you saw these boxes, which you do not know what they contain, was when you put them into Lyons' car?

MR. CAREY: Objection, your Honor. Asked and answered.

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THE COURT: I suppose it has been, probably two or three times.

MR. BRUCE: Beg your pardon, your Honor?

THE COURT: I told you before, Mr. Bruce, [illegible] brought out in the record can be used to the benefit of your client.

MR. BRUCE: It is hard to keep track of all this.

Q Now, going back to the meeting that you had at the Chippawa Club that you testified to, you were brought into this meeting where the other parties were already there; is that correct, Mr. Casey?

A I don't recall exactly.

Q Well, let me rephrase the question. At this meeting you were not the party who was the spokesman or the leader, were you at that time?

A Which meeting?

Q At the Chippawa Club when you were there to discuss the purchasing of guns to go to Ireland.

A I don't recall that.

Q Let me refresh your recollection. There was a time when you met at the Chippawa Club with Mr. O'Brien, Mr. Grady?

A Yes.

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Q And other people?

A Yes.

Q And at that meeting you were told that Mr. O'Brien was making certain connections or making certain accommodations for the purchase of guns from Mr. Jankowski; is that correct?

A I was told this when I first met him.

Q When you first met him?

A Yes.

Q But what part did you play in these meetings?

A I didn't have any.

Q You were just there as a party of the meeting but not as a moving party?

A I had nothing to do with the arrangements of purchasing the weapons with the gun owner, the store owner.

Q The only thing you know is what you were told?

A Yes.

Q And you never had any conversation with Mr. Jankowski?

A No.

Q Mr. Jankowski was never present at any of these meetings?

A Not that I recall.

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Q And never present at Mr. Lynch's home when you saw the cartons with old guns, and so forth?

A He wasn't there.

Q When you were asked to sign your name you testified that you were signing in the wrong place.

A Yes.

Q Is that correct?

A Yes.

Q And Mr. Jankowski told you where to sign; is that correct, sir?

A Yes, he did.

Q Now, did you notice at that time that you were asked to sign that there were certain serial numbers alongside your name or the place where you were asked to make your signature?

A I didn't notice.

Q Did you notice that there was any serial numbers at all?

A To me it appeared blank when I signed it. There was nothing on the left-hand side that I could remember.

Q When you signed your name how long did you tak to actually peruse the document you were signing?

A I didn't look at it that long. I just signed

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my name.

Q Signed your name and went out?

A Yes.

Q You didn't care about it?

A I signed it and left.

Q That's all you were concerned with?

A Yes.

MR. BRUCE: No further questions.

THE COURT: Mr. Carey, anything else of this witness?

MR. CAREY: I do have a few questions.

REDIRECT EXAMINATION

BY MR. CAREY:

Q Who told you what had to be done when you went to J & J?

A Frank Grady.

Q What did he tell you had to be done when you went to J & J?

A Told him to meet him there after work and I was to sign.

Q Did J & J know whether or not you were a customer of his,when you went to the store at that time?

MR. BRUCE: Objection.

THE COURT: Sustained.

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Q Did J & J know whether or not you were in there --

MR. BRUCE: Objection.

THE COURT: I am sustaining the objection to what J & J knew.

Q Did JJ say anything to you when you entered his store?

A Yes. When I went to sign the book he pushed my hand away. He told me I was signing in the wrong space and he indicated where I should sign.

Q Is that all that he said?

A That's my recollection.

Q Did he ever ask you what kind of gun you would like?

A No, not that I recall.

Q Did he ever ask you whether you were going to use it for bird hunting or deer hunting?

A No.

Q You said on cross examination that Mr. Jankowski was selling guns for money. To whom was he selling those guns?

A To the Irish Northern Aid Committee.

MR. BRUCE: Objection.

MR. DURKAN: Objection. Move it be stricken.

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THE COURT: Yes.

Q To whom was he selling?

A Martin Lyons. They went basically to him.

MR. BRUCE: Objection to that, your Honor.

THE COURT: I will sustain the objection. This witness can tell what he saw, what he said, what he did, what was done and said in his presence but he is being asked for a conclusion at this point.

Q At the time you were given that transfer document, did you know whether or not the person listed there as the transferee was deceased?

A Yes. Martin Lyons mentioned the fact that the people on the receipts were people who were deceased.

Q You knew you hadn't transferred anything to that person?

A Right.

MR. DURKAN: Objection.

THE COURT: This is all repetitious. You can't transfer anything to a dead man. This is all repetitious, Mr. Carey, and I wish you would get on with it.

Q In any event you knew then that that document was not a truthful document on its face?

A Yes.

MR. DURKAN: Objection.

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THE COURT: That is permissible. I will overrule the objection to that.

Q With respect to the books you signed at Mr. Jankowski's you also knew at the time you signed them that they were not truthful on their face?

MR. BRUCE: Objection.

MR. DURKAN: Objection.

THE COURT: He may be examined as to his state of mind. Overruled.

A Repeat the question.

Q At the time you signed the book at Mr. Jankowski's store you knew that the document you signed on its face was not truthful?

A Yes, I knew it was untruthful.

MR. BRUCE: Objection

THE COURT: His state of mind was inquired into.

A Yes, I knew it was not truthful.

Q At the time you picked up the weapons in the back room at Mr. Jankowski's gun store, in what condition was the box?

A New.

Q And was it opened or had it been opened or was there an indication it had been opened and sealed?

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THE COURT: What box are we talking about?

MR. CAREY: The box which contained th M-1 printed on it.

THE COURT: It has been gone into on cross examination. Let's get on with it.

Q Do you recall whether that box had been opened or remained sealed?

A They were individual boxes and they were sealed.

Q One box for each weapon?

A Yes. They came in slim containers, very narrow.

Q Where does Frank Grady live?

A St. Andrew's Place in Yonkers.

Q What was the reason that you didn't tell the government the truth prior to today?

MR.DURKAN: Objection.

MR. BRUCE: Objection.

THE COURT: Overruled.

A Fear.

Q Fear of what?

A Retaliation and revenge.

Q From whom?

A Martin Lyons.

Q Anyone else?

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A Patty McFarland and the fellow on Sommerville Place in Yonkers.

Q What kind of retaliation?

A Against myself and my family.

Q What against yourself and your family?

MR.DURKAN: Objection.

THE COURT: Sustain the objection. I will tell the jury at this time that this witness may explain, and the jury may consider what explanation -- the jury may consider what weight or value his explanation has for any inconsistency or apparent untruthfulness in any of his testimony.

However, the jury cannot infer that any of the three gentlemen whose names he mentioned have anything to do with these defendants insofar as concerns fear of this witness. You cannot impute the fear that he may have for the persons he just named as representing any basis for any inference adverse to the men who are on trial here today.

He is talking about three other people. What his feeling is toward them.

Q Finally, you said on cross examination that you went to JJ's on three occasions. Did you go to JJ's once with a man named Mr. Duffy?

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A Yes.

Q Did you go a second time to sign for the books?

A Yes.

Q Did you go a third time to pick up approximately twenty weapons?

A Yes.

Q Did you go a fourth time to pick up approximately one carbine?

A Yes.

MR. CAREY: No further questions.

THE COURT: Anything else for this witness?

MR. DURKAN: Yes.

RECROSS EXAMINATION

BY MR. DURKAN:

Q On the question fo fear, Mr. Casey, this fear that you speak of, sir,did this fear suddenly become most apparent yesterday?

A Fear when they first started coming around asking questions.

Q Didn't you tell the grand jury back in February of 1975 that you weren't afraid and nobody had threatened you?

A No one had threatened me.

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Q And nobody has threatened you?

A No one has threatened me. I still have that fear.

Q Yesterday for the first time you told the truth, who were you afraid of, the government or Martin Lyons?

A No.

Q Sir, did they promise you that they wouldn't prosecute you?

A They did not.

Q Did they promise you anything?

A Yes. They told me if I didn't tell the truth at this trial they would really prosecute me, really give me a hard time.

Q If you didn't tell the truth this time they would really prosecute you?

A Yes.

Q So the fear you really have is the fear of the government?

A I have no fear of government. I'm telling the truth.

Q You are afraid you will be prosecuted?

A I'm not afraid to be prosecuted. I'm telling the truth.

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Q Is it not a fact that when somebody from the government told you that if you don't tell the truth we will get you in a prosecution, that's what made you tell what you told us here today; is that right?

A No. You asked me if I was promised anything. I was promised if I did not tell the truth I would be prosecuted.

Q Well, you were promised you would be prosecuted?

A Yes, if I did not tell the truth.

Q Does the idea of being prosecuted instill any fear of you?

A No fear.

Q No fear of being prosecuted?

A I have no fear that I'm not telling the truth. I am telling the truth.

Q So you have no fear?

A I still have fear of retaliation from Martin Lyons.

MR. DURKAN: That's all.

MR. BRUCE: That's all.

THE COURT: You are excused.

(Witness excused)

THE COURT: Memebers of the jury: We will resume at 10:00 in the morning. Don't discuss the case.

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Keep an open mind.

(Jury leaves the courtroom)

(Adjournment taken to March 10, 1976 at 10:00 o'clock a.m.)

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there is some particular matter you can focus his attention on, you may proceed.

Q Is there anything in the particular features of Mr. Grady's handwriting which you have not yet explained as the basis for your conclusion?

MR. DURKAN: I will object to it as improper redirect.

THE COURT: I think it is improper redirect.

MR. CAREY: I have no further questions.

THE COURT: The objection is solely as to the form of the question, Mr. Carey.

MR. CAREY: I understand, your Honor.

THE COURT: You may step down.

(Witness excused)

MR. CAREY: The government calls George Clearwater.

G E O R G E C L E A R W A T E R , called as a witness on behalf of the government, after being duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. CAREY:

MR. BRUCE: May we have a side bar conference prior to this witness testifying?

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(At the side bar)

MR. BRUCE: On information and belief, it is the position for counsel for Jankowski that the government intends to elicit from this witness testimony as to certain telephone conversations presumably made with John Jankowski.

I would respectfully request of this Court that any testimony as proposed be suppressed if there is no relevancy to the charges made against Jankowski as to what this witness will testify to.

I would now ask the government to respond to my position.

MR. CAREY: I take it it is a request for an offer of proof, your Honor.

THE COURT: I don't really understand what the request is. Is this man being proferred to testify to a telephone conversation he had with Jankowski?

MR. CAREY: Both telephone conversations and conversations in person.

THE COURT: What is it that requires it to be suppressed?

MR. BRUCE: It has no relevancy to the charges made against Jankowski and any conversations that would be testified to would be merely prejudicial and not part of any type of alleged conspiracy as committed by the

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defendant Jankowski.

THE COURT: What is the offer of proof?

MR. CAREY: The testimony will be that in May or early June, late May or early June of 1970 Mr. Jankowski called Mr. Clearwater, who himself was a licensed gun dealer at that time, and asked him if he could get him 50 M-1 carbines off the record as part of an order of 500 M-1 carbines. Mr. Clearwater said yes.

Subsequently they had other conversations in which Mr. Jankowski said that he was cancelling the order, that the people who had placed the order had found a source which could provide the weapons at a better price. Mr. Jankowski also told him that the people who wanted the weapons had a ship waiting.

MR.DURKAN: I want to go on the record, your Honor, as absolutely and totally opposing this offer as being prejudicial to my client.

MR. BRUCE: Further,your Honor, I would like to support my application with the point that this might be possibly suggestive of other crimes. There is absolutely no value of -- any probative value, that is, of what is intended to be offered here to prove that there was a conspiracy .

(Pause)

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THE COURT: I could see bringing this in as rebuttal testimony but I don't think it is within the scope of the present indictment.

MR. CAREY: Let me explain, your Honor, what happened here.

Mr. Jankowski, who it is proved beyond a doubt, it seems to me --

MR. BRUCE: I object to it.

THE COURT: Don't object because I think he is one hundred percent right. What he says to me at side bar is perfectly okay. If he said it before the jury it would be a different situation.

MR. CAREY: Has conspired between early May and July to provide Mr. Grady with M-1 carbines; that they did so in such a way as to defeat the purpose of recording in the books where they were supposed to record the names of the true purchaser of the weapons.

At the same time right in between the two deliveries to Mr. Grady, Mr. Jankowski calls Mr. Clearwater up and says he wants more M-1 carbines, number one; number two, he says he wants them unregistered, which is clearly relevant to his knowledge of unlawfulness of what happened before and after. Number three, he said the people who were buying them wanted to ship them, which is relevant

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to the proof that the weapons which have been identified an dwhich in fact were given to Mr. Jankowski were exported from the United States.

So it is all relevant to Mr. Jankowski's knowledge of the fact that he was breaking the law and it corroborates the other witnesses who said that the purpose of this exercise that they were invited to engage in by Mr. Grady was to provide weapons to Northern Ireland.

THE COURT: On the present state of the record I decline to take it. I think it would be available as rebuttal testimony if there is any contention on Jankowski's part that he didn't know what was going on.

MR. CAREY: How is the government going to rebut the defendants if they don't take the stand?

THE COURT: How do I know that?

MR. CAREY: How is it not part of the conspiracy? How is it not a statement in furtherance of the conspiracy?

THE COURT: As I read the indictment the purpose of this conspiracy --

MR. CAREY: Was to falsify records. It is a similar act at the same time that corroborates that. He said he would take the weapons, he wanted them unregistered. It is the clearest proof he knew what he was doing that

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It is damaging to the defendant and he made the statements and he must suffer for them. It is not prejudicial to the jury in the sense it inflames them in any way.

THE COURT: It does not relate to the charge charged.

MR. CAREY: It is a prior similar act to the second time and a subsequent similar act to the first time.

A statement made by co-conspirator in furtherance of the conspiracy. It is a jury question.

THE COURT: It is not in furtherance of the conspiracy charged.

MR. CAREY: It certainly is, if the conspiracy charged was to falsify the records and he said he wanted records off the record. That seems to me to be a statement in furtherance of the conpsiracy charge. It does not have to be --

THE COURT: That might be right, gentlemen.

MR. DURKAN: On that particular point, the whole line of evidence up to this point shows that on the contrary, they did not try to falsify. Every man who was part of the plan went in and signed his name.

THE COURT: I really must say, as I told your

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was unlawful. There is no better proof.

It is clearly a statement of Mr. Jankowski in furtherance of the conspiracy.

THE COURT: Inthe conspiracy charge in Indictment 227 is focused on records. Here they are talking about a different transaction whereby they are going to buy firearms off the records of the J & J Bait Shop.

As I say, I think if any defense is proferred where he claims total ignorance of what was going on, of course it would be admissible. But on the government's main case I decline to take it.

MR. CAREY: Let me explain something.

First of all, that's clearly going to be an argument made to the jury that we haven't proven he knew the law or --

THE COURT: He has to have a specific intent to do what he did.

MR. CAREY: The jury is going to have to believe he was doing something unlawful.

Number two, the Court is making the argument for Mr. Bruce, not Mr. Bruce. Mr. Bruce has not made any argument yet on my offer of proof. He simply asked foran offer of proof. The fact is my offer of proof shows this is not only clearly relevant but probative.

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associate in pre-trial conference, I just don't agree with you.

If you believe the government witnesses, which, of course, the Court must for these purposes, this is a conspiracy to falsify the records because you have people buying guns, writing themselves in for purchases they never bought, never possessed, never paid for and which they transferred to a deceased person. That is false records in my book.

MR. DURKAN: I, of course, disagree.

THE COURT: I know you do.

MR. DURKAN: In this instance the regulations called for --

THE COURT: I can't argue that here with you now.

I believe I ought to take the proof.

MR.DURKAN: One other thing, your Honor. This order for 500 carbines, which we have listed in the minutes of the grand jury. 500 carbines, no testimony that our people wanted 500 carbines and on the contrary this fellow said that he thought the carbines were going to South America or Cuba.

MR. CAREY: What he thought is irrelevant.

THE COURT: It is not irrelevant, Mr. Carey.

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He must have had a basis for thinking it.

MR. CAREY: He didn't unfortunately.

THE COURT: That is a matter for the jury, gentlemen. I believe I should take it. I don't want to be accused of making Mr. Bruce's argument. I think that is an improper suggestion because I am trying to save time and when I think I understand what he is saying I don't have to listen to him any further. If I don't state his position correctly he will tell me.

Let's go forward, gentlemen. Iwill take it.

(In open court)

MR. CAREY: May I proceed, your Honor?

THE COURT: Yes.

DIRECT EXAMINATION CONTINUED

BY MR. CAREY:

Q Mr. Clearwater, by whom are you employed?

A I am self-employed.

Q Directing your attention to 1970, how were you employed then?

A Self-employed.

Q In what capacity were you self-employed?

A I had a sporting goods shop.

Q Did you have any licenses at that time?

A Yes, I did.

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Q And would you please tell the jury what that license or licenses were?

A Federal Firearms licenses, New York State Dealer in Firearms, and also Gunsmithing license for the State of New York.

Q For how long prior to 1970 had you been a licensed firearms dealer?

A Approximately ten years.

Q Do you know a man named John Jankowski?

A Yes, I do.

Q Do you see that gentleman in this courtroom?

A I do.

Q Would you please point him out to the jury?

A Yes. It is the rear table, the gentleman on the left, lef-hand corner.

Q And could you describe his clothing?

A It's a light suit -- it's a brownish-tan suit, I suppose, orange type shirt and a striped tie.

MR. CAREY: May the record reflect that the witness has identified the defendant John Jankowski, your Honor?

THE COURT: The record will so indicate.

Q When did you first meet Mr. Jankowski?

A I don't know the exact date but it was before

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1970.

Q And approximately how long before 1970?

A A few years, two, three years.

Q In 1970 did you know how Mr. Jankowski was employed?

A Would you repeat that?

Q In 1970 did you know how Mr. Jankowski was employed?

A I do know he had a sporting goods shop or a fish shop, selling fishing, bai, and equipment, and so forth.

Q Directing your attention to May 1970 did you have a conversation with Mr. Jankowski?

A Yes, I did. I'm not quite sure if it was May, but I did have a conversation with him in his place of business.

Q To the best of your recollection when was that conversation?

A As the month goes?

Q Yes.

A Anywhere between May and June, somewhere within that time.

THE COURT: State who was present please.

Q Who else was present at that conversation?

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A No one else was present.

Q Where did you have that conversation?

A In the back room of his business establishment.

MR. DURKAN: I was about to object to anything being said at this particular conversation as not being binding on the defendant Grady.

THE COURT: Members of the jury will observe that it is not contended that Mr. Grady was present at the time of this conversation. I will instruct you further with respect to this entire aspect of the case at the end of the trial. I ask you to keep separate in your minds who was there and who wasn't there.

Go ahead, Mr. Carey.

Q Mr. Clearwater, what, if anything, was said by you and Mr. Jankowski at that time?

A Well, the conversation, as I recall, is that he asked me if I was able to obtain any firearms, particularly carbines, M-1 carbines, .30 caliber. I asked him why?

He says, "Well, I want to know if I can get some."

I said, "What amount are you talking about?"

He says, "I'm talking about minimum at least 100, maximum of at least 500."

I says, "How do you mean, how do you want to

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get them? Off the books or legal guns or what?"

He said, "I don't want them registered."

He says, "I have a buyer for them. Also I want to buy some ammunition along with the carbines."

I said, "Well, I'll see what I can do."

That's just about where that conversation ended.

Q Did he indicate, and do you recall now if he did so, what the quantity was of the ammunition which he wanted?

A That is rather vague in my mind, but I know it was agreat amount of ammunition. I can tell you, it is over 1,000 rounds but I really don't recall the maximum amount.

Q At any time during that conversation did you discuss moeny?

A Yes, we discussed, as I recollect, that the carbines would be like $100 a carbine. I'm trying to recollect, so forgive me if I'm not quite sure. But I'm fairly sure it was at least $100 a carbine.

Q What, if anything, did you do as a result of that conversation?

A Well, after I left I went back to my place and on the way back I thought about this whole thing. If I

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may elaborate in respect to what I am going to say. I was concerned --

THE COURT: Don't give us the operation of your mind. Just tell us what you did.

THE WITNESS: All right, sir. I went back to my place of business and I called up Tomas Quinn, a federal agent, and I told him exactly what transpired between Mr. Jankowski and myself.

Q Did there come a time afterwards when you had another conversation with Mr. Jankowski?

A Yes.

Q When was that?

A I'm sorry, what was that?

Q Approximately when did you have that second conversation?

A I don't recall. It could have been about a week later.

Q And where did you have that conversation?

A We talked, I believe it was, on the telephone.

Q And who, if anyone else, was present to your knowledge at either end?

A No one else present. Just between Mr. Jankowski and myself.

MR. BRUCE: I object to any telephone conversation

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unless there has been a proper foundation laid for the eliciting of such testimony.

THE COURT: Yes, such a foundation must be elicited from this witness.

I will also tell the jury there is no showing Mr. Grady was a party to this conversation.

Q Mr. Clearwater, who initiated that telephone call?

A I did.

Q And who did you call?

A Mr. Jankowski.

Q And where was the telephone that you were dialing?

A From my place of business.

Q Where was the telephone located which you were dialing to?

A Mr. Jankowski's place of business.

Q Where did you get that telephone number?

A I had it in my files. Normal procedure in any business.

MR. BRUCE: Objection.

THE COURT: Overruled.

Q Who answered the telephone?

A I don't recall whether it was Mr. Jankowski

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or someone else but I eventually spoke to Mr.Jankowski.

Q How do you know that you were speaking to Mr. Jankowski?

A I know Mr. Jankowski's voice as anybody would know their own people they know.

MR. BRUCE: I object on the basis of conclusions by the witness.

THE COURT: If the witness says he knew the voice of Mr. Jankowski at the time he talked with him, I'll overrule the objection.

Q How many times did you talk to Mr. Jankowski prior to that occasion?

THE COURT: On the phone.

A Just once on the phone.

Q How many times prior to that had you talked to him in person?

A As I recollect, as I'm remembering now I believe it was twice, I believe it was twice.

Q And when you were on the phone did you ask for anyone by name?

A I asked for JJ.

Q And did there come a voice on the phone in response to that request?

A Yes, Mr. Jankowski.

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Q Did you recognize that person to be the same person whom you had spoken to earlier on the telephone and in person?

A Well, yes, of course, I recognized his voice.

Q Would you please tell the jury what, if anything, you said and what, if anything, Mr. Jankowski said during that telephone conversation?

A Well, the conversation on the telephone, as I recollect, was that Mr. Jankowski had said that he no longer needed the firearms because they were able to obtain them or were going to buy them in Florida at a cheaper price. That's about the gist of that conversation.

Q Did he say anything else to you about what they were going to do with the firearms?

A No. I had asked him and he did not tell me what they were going to be used for.

Q Did he ever discuss with you where the firearms would be delivered that he ordered from you?

A Yes.

MR. BURKAN: We will object to this, your Honor.

THE COURT: I will give the same instruction insofar as concerns Mr. Grady. There is no showing that

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Mr. Grady was a party to this conversation.

Go ahead.

Q Do you recall when that was?

A I'm sorry, would you repeat that again? The interruption, I lost my train of thought.

Q Certainly.

Did you ever discuss with Mr. Jankowski where the firearms he ordered from you were to be delivered?

A Yes. Mr. Jankowski said that there was a ship waiting for them.

MR. CAREY: I have no further questions of this witness, your Honor.

THE COURT: Mr. Durkan, you may cross examine without waiving your motion to strike this testimony out as not binding on Grady.

MR. DURKAN: At this time, if the Court will permit it, I would defer to Mr. Bruce.

THE COURT: That's perfectly all right.

MR. BRUCE: May Iinquire, your Honor?

THE COURT: Yes.

CROSS EXAMINATION

BY MR. BRUCE:

Q Mr. Clearwater, you are no longer in business; is that correct, sir?

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A That's right, sir.

Q And could you tell this Court and jury why your business has been terminated, sir?

A In 1968 a new federal gun law came into existence which would not permit to sell firearms out of state. That was approximately twenty percent of my business. Then from '68 until '70 we had a two-year recession, and that recession cut into my profits in my business. Plus the fact that I had started my business on a very small amount of money. After five years, within the time when the recession started, my creditors were demanding their money, which I understood that and this is what helped the demise of my business.

Q So on the basis of the situation, economic situation of recession, and other factors such as regulations which cut into your business, you could no longer operate your business profitably; is that correct, sir?

A Correct.

Q As a result of these regulations, sir, have you ever come under the purview of the Department of Alcohol, Tobacco and Firearms?

A Purview, would you elaborate on that?

Q Have you ever been investigated by them?

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A Yes, every year that's done.

Q Have you ever been called down to the office by them?

A No, sir.

Q But you have been investigated by them in your own place of business; is that correct?

A Yes, sir.

Q Now, the fact that you were investigated, has that anything to do with the fact that you are no longer in business today?

A No, sir.

Q It is just the fact of the recession and the regulations?

A And investigation, every firearms dealer in the United States is investigated.

Q I ask that you answer only the question.

A Yes, sir.

Q Now, are youunder investigation today?

A No, sir.

Q When for the first time did you give this testimony to the United States Attorney or their agents or to the Alcohol, Tobacco and Firearms Division?

MR. CAREY: Objection, asked and answered.

THE COURT: It is such a combined question. I

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think it should be rephrased. One at a time.

MR. BRUCE: Withdraw the question.

Q When for the first time,Mr. Clearwater, did you ever indicate to anyone that there was a conversation held between you and Mr. Jankowski in his back room of his store?

A Within that week after I had spoke to Mr. Jankowski. The problem is my recollection of the time, I'm not exactly sure whetherit was an hour after I spoke to him or within that week.

Q So your recollection of what occurred six years ago is vague; is that correct?

A Only in timing, sir.

Q As to time?

A Yes, sir.

Q You are sure there was a conversation?

A Oh,yes, sir.

Q Now, how long had you known Mr. Jankowski prior to this conversation?

A Two or three years.

Q And you had dealings with him?

A Oh, yes.

Q And would he on prior occasions have called you to place orders for firearms?

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A I don't recall that, sir.

Q You don't recall?

A No, not that.

Q It is possible he could have called you?

A It is very possible.

Q Were you in the position, sir, to supply firearms to other dealers?

A Oh, yes, sir.

Q So this was part of your business?

A Absolutely, sir.

Q And a call from Mr. Jankowski, if it did occur, or a conversation with him with a request to furnish between 100 and 500 carbines was not unusual,was it?

A No, sir.

Q Now, you said that you were in his store. You were in the back room.

A Yes, sir.

Q How many times have you been in that store?

A I don't recall, sir.

Q That is prior to that time?

A In his store itself,perhaps a half dozen times, if that much.

Q That would be the total amount of times that you have visited his shop?

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A That's true, sir.

Q Half a dozen times.

Now, you said that you were in the back room.

A Yes, sir.

Q Can you describe the premises, sir?

A Well, the back room is where he kept his bait for his fishing, his worms and various other bait for fishing, and so forth.

Q To your knowledge, Mr. Clearwater, was this area open to the public?

A No, sir.

Q It was closed, you couldn't go back there?

A Not unless he took you.

Q How did you get back there?

A He took me.

Q Did you go through a door?

A Yes, there was an opening. Yes, a door.

Q You are sure about that?

A As I recall, yes.

Q There was a door and you went through this door?

A Yes.

Q What was your purpose in being there at that time? Why were you there?

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A Excuse me?

Q Why were you there?

A That was at the time he requested the carbines.

Q Why did you go to Mr. Jankowski's store on that particular day?

A He had called me at my place of business to stop in to see him.

Q He called you on the telephone?

A Yes, sir.

Q And pursuant to this telephone call you went to his business?

A Yes, sir.

Q And while you were there he stated that he wanted certain requirements from you?

A Yes, sir.

Q And there was nothing unusual about this request at that time?

A At that point, right, sir.

Q Then there came a time when you called Mr. Jankowski on the telephone?

A Yes, sir.

Q What was the purpose of that telephone call, Mr. Clearwater?

A As I had mentioned earlier, it was a cancellation--

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to findout about the sale of the carbines or the ordering of them.

Q Sir, you said there was a cancellation. When for the first time did you learn there was a cancellation?

A When I spoke to him on the phone.

Q You called him, didn't you?

A Yes.

Q Was that pursuant to a cancellation?

A No.

Q What was the purpose that you called him?

A The purpose was to findout whether he wanted these carbines or not.

Q Did you have the carbines at that time to deliver?

A No, sir.

Q And you just voluntarily called him, is that correct?

A No, I didn't volunteer to call him in that respect.

Q Did you volunteer to call him, sir?

MR. CAREY: Objection, your Honor. The witness didn't finish his answer.

THE COURT: I don't think he did.

You may finish your last answer.

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THE WITNESS: Thank you, sir.

Due to the meeting with the federal agents they had told me to follow through on this carbine ordering of Mr. Jankowski, and that is why I had called him to find out if he wanted these firearms.

As I found out he didn't want them no longer. But my -- I'm sorry, go ahead.

Q That's the answer?

A Yes.

Q You have answered the question.

Now, between the time that you were in the premises owned by Mr. Jankowski you had a conversation with federal agents, is that correct?

A I'm sorry, would you repeat that question?

Q After the time that you were in Mr.Jankowski 's store there came a time when you had a conversation with federal agents?

A Yes, sir.

Q I see. Now, can you tell me the facts and circumstances of that conversation?

A When I explained to the federal agents exactly what transpired between Mr. Jankowski and myself, they advised me or instructed me to follow through on this order and to supply him with firearms in order to know exactly

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what he is going to do with them. That is the gist of the conversation.

Q Up until that time, Mr. Clearwater, the purpose of your contact with the federal agent was to merely find out what Mr. Jankowski was going to do with these firearms if they were delivered to him as requested; is that correct?

A That's correct.

Q Is that your position?

A That's my position.

Q What was the lapse of time between the time when you were in his store and the time when you initiated a telephone call to his premises?

A As I will repeat, sir, I don't recall whether it was in an hour, within days or a week, sir. I don't remember exactly the time, sir.

Q Now, prior to your calling Mr. Jankowski, which you can't remember whether it was an hour or a week --

MR. CAREY: Objection, your Honor.

THE COURT: Yes. Just frame another question. Don't sum up.

Q Prior to your call to Mr. Jankowski, you had contact with the federal agent; is that correct?

A Yes.

Q Where did this contact take place?

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A In my place of business.

Q Did you call the federal agent to come to you?

A Yes, sir.

Q Now, you testified on cross that there was nothing unusual about this matter; is that correct, Mr. Clearwater?

A At a point, that's correct, sir.

Q What point did it become unusual for you to call the federal agent?

A When they were requested to not be legally registered, sir.

Q Now, what does that mean to you, legal registering, as an expert in the field?

MR. CAREY: I object.

THE COURT: I don't see why that's objectionable, what he meant by it or what he understood it to mean.

Give us your understanding as of 1970.

THE WITNESS: May I explain that in length, sir?

THE COURT: Try to answer the question. You want it to be read back?

THE WITNESS: I understood the question. A registration is when I purchase a firearm from a manufacturer or distributor I receive the firearm. Then it is registered

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in my ledger, serial number, manufacturer, caliber, and so forth.

Then when I resell that firearm I sell it with the name of the party that purchased it. It is entered into my leager who it went to, serial number, manufacturer, and so forth, and the date it left my place of business.

Q So if Mr. Jankowski or if you are correct in stating that Mr. Jankowski asked you for unregistered carbines, he was asking you to break the law, wasn't he?

A Correct, sir.

Q And at that point it became unusual in your mind?

A Yes, sir.

Q Well, did you refuse him at that time?

A No, sir.

Q Did you admonish him in any way?

A No, sir.

Q You said absolutely nothing?

A Yes, sir.

Q And then you proceeded to tell the agent.

A Yes, sir.

Q What occurred?

A Yes.

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Q Did you make any notes of this conversation?

A No, sir.

Q This is purely on your own recollection?

A Yes, sir.

Q Had you ever done business like that before?

A No, sir.

Q Are you absolutely sure?

A Yes, sir.

Q Now, I submit, Mr. Clearwater, that you --

MR. CAREY: Objection to form, your Honor.

THE COURT: I would have to hear the question.

Q You went out of business on or about 1971; is that correct?

A Yes.

Q How many months after did you go out of business where you had this conversation with the special agents?

A Approximately a year, I suppose, sir. Anywhere from ten to twelve months, sir.

Q Ten to twelve months?

A Yes.

Q Had you had any prior contact with the special agents prior to your telephoning them about Mr. Jankowski's conversation with you?

A I'm sorry, repeat that.

Q Did you have any prior contacts with the special agents before you had the conversation with Mr. Jankowski?

A No, sir. Other than normal procedures of yearly inspections.

Q Sir, answer the question.

Did you or did you not have any prior contact, yes or no?

A No, sir.

Q You had no prior contact?

A No, sir.

Q But all of a sudden a telephone call comes to you and the person says that they want 100 to 500 unregistered carbines and you initiate a call to the special agents; is that your testimony?

A Not quite true, sir.

Q Not quite true?

A No. The phone call was requested --

Q Answer the question yes or no. I will ask the Court to admonish you --

THE COURT: Frame another question.

Q Again I go back to this question which you were not able to answer with any certainty. If I state your position unclear or incorrect, please correct me.

You don't remember when you had the conversation

with Mr. Jankowski, that is the second conversation on the telephone, actually as to whether it was within a week after the first contact that you had with him in the back room, or whether it was one hour; is that your testimony?

A That's my statement, yes, sir.

Q Can you remember when you called the special agent?

A That's what I'm saying, sir. I don't recall exactly when I called the agent.

Q What number did you dial?

A I have no recollection of that number, sir.

Q Well, do you know where that telephone call was directed as to county?

A I don't recall exactly, sir.

THE COURT: Were you acquainted with Mr. Quinn before the day of that telephone conversation?

THE WITNESS: Yes, sir.

THE COURT: You knew him to be an Alcohol, Tobacco and Firearms agent?

THE WITNESS: Yes, sir.

Q Were you volunteering information, Mr. Clearwater, to eliminate any pressures that might have been brought on you at that time by the Alcohol, Tobacco and

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Firearm Agency?

A No, sir.

Q And this was just purely voluntary?

A Yes, sir.

Q You weren't looking for any favors or any compensation or anything?

A No, sir.

Q And you took no notes of this conversation?

A No, sir.

Q This is just your word that you had a conversation with this gentleman here; is that correct?

A Correct, sir.

Q And this took place approximately six years ago?

A Yes, sir.

Q When did you have occasion, sir, to have any other contact regarding this matter with the agents?

A Would you restate that?

Q Did you have any subsequent conversations with the agents regarding Mr. Jankowski?

A No, sir.

Q So the sum total of your contact was one call to the federal agent; is that correct?

A At that point, yes, sir.

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Q And you had no other contact whatsoever?

A Do you mean after thatphone call? I'm sorry, would you just --

Q You had no contact with the special agent regarding that situation that took place with Mr. Jankowski?

MR. CAREY: May we have a time determined?

THE COURT: The question is being asked without reference to time. What the attorney is trying to find out is subsequent to that first phone call to Agent Quinn did you have any other or later or additional contacts with the ATF people concerning Mr. Jankowski. That's a very simple question, isn't it? You can answer it yes, you did have or no, you didn't.

THE WITNESS: Yes, I did.

Q Was tha regarding Mr. Jankowski?

A Yes.

Q When did that take place?

A That took place after I had explained to him what had transpired between Mr. Jankowski and myself and they had told me to, as I said earlier, to continue with this, with the order of 100 carbines or so, to continue the transaction with Mr. Jankowski.

Q Well, that was done in one transaction, was it not, Mr. Clearwater?

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Let me suggest this to you, sir: When you called the special agent, the special agent responded to your call.

MR. CAREY: I object. This has been asked and answered several times.

THE COURT: It has been asked and answered.

Q Wasn't it at that time, Mr. Clearwater, that the special agent told you to go through with the deal?

A Yes, sir.

Q Did you have any other conversations with the special agent after that time?

A Yes, sir.

Q When was that?

A I don't recall, sir.

Q Was it concerning Mr. Jankowski?

A Of course, sir.

Q What was the conversation? What did you say to them and what did they say to you?

A I really don't remember, sir. This had all to do with the purchasing of the firearms for Mr. Jankowski, but I don't remember the conversation in words.

Q Mr. Clearwater, you had two conversations with Mr. Jankowski regarding some rifles; is that correct , or carbines?

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A Yes, sir.

Q The first conversation was in his premises; is that correct?

A That's right.

Q The second one was where you called him on the telephone; is that correct?

A Yes, sir.

Q At that time he told you he wasn't interested any more; is that correct?

A Yes.

Q That was the end of it?

A Yes, sir.

Q No more, no less; is that correct?

A That's correct, sir.

Q Now, you stated that he requested to you on the premises that he wanted unregistered firearms.

A Correct, sir.

Q Now, is it a fact, sir, that on your direct testimony --

THE COURT: Don't examine about his direct testimony. Examine him about the underlying circumstances. The jury has his direct testimony. Don't ask him what he said on his direct testimony.

Q Did you suggest to Mr. Jankowski whether he

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wanted those rifles registered or unregistered?

A No.

Q Are you absolutely sure?

A I asked a question but I suggested nothing.

Q You asked a question?

A Of course, sir.

Q Then what prompted you to ask a question of this gentleman here as to whether the transaction would be illegal?

A Because of the amount, sir, and the fact that I must order these firearms from manufacturers and register them myself. In order for me to sell them they must be sold legally.

Q Are you in the habit, sir, of selling illegal guns?

A No, sir.

Q Well, why did this occur to you then?

A This would occur in any large transactions, in normal conversation.

Q So you countenanced, sir, there is illegal transactions if a certain request for an order over a certain amount; is that correct?

A Possibly it's true.

Q Possibly you say?

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A Let me rephrase that.

Q You say it is possible.

A May I rephrase that? I used the wrong word.

Q I"m asking you a question.

THE COURT: The witness is saying he used a wrong word. Let him use the right word.

A There are illegal transaction in the United States, absolutely.

Q Are you a part of those illegal transactions?

A No, sir. But Imust protect myself as a businessman.

MR. BRUCE: I ask that be stricken.

THE COURT: Irefuse to strike it because you are arguing over something we have all been over once. Let's not argue with each other. That goes for you, Mr. Clearwater, and it goes for you too, Mr. Bruce.

Q You do concede, Mr. Clearwater,that you were the one who asked the question of Mr. Jankowski of whether he wanted this registered or unregistered; is that correct, sir?

A Yes, sir.

Q Had you ever dealt with Mr. Jankowski before?

A No, sir, not in a quantity of firearms.

Q Had you ever dealt with anyone before with

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firearms?

A With firearms?

Q Yes.

A Of course, sir. Not in quantity, no, sir.

Q You never dealt with anyone in quantity of 500 or 100?

A Not of one make, sir.

Q How long have you been in business, up to the time that you terminated?

A Approximately four years.

Q And you are a gunsmith?

A Yes, sir.

Q How long have you been a gunsmith?

A Over fifteen years.

Q So you have been dealing in guns then for fifteen years, sir is that correct?

A That's right, sir.

Q What is your occupation now, Mr. Clearwater?

A Antique dealer.

Q You are no longer dealing in guns?

A Only antique firearms, sir.

Q Antique firearms?

A Yes, sir.

THE COURT: It isn't necessary to repeat every

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answer. You are just dragging out the trial.

MR. DRUCE: Sorry, your Honor.

Q So after fifteen years, Mr. Clearwater, you have given up your business and you have gone into antiques?

THE COURT: He told us that. We all know that now.

Q Now, on this second conversation that you had when you called Mr. Jankowski, Mr. Jankowski told you that he no longer needed any firearms from you; that it was a question of price; is that right?

A Yes, sir.

Q Did he mention anything about registered or unregistered at that time?

A No, sir.

Q Nothing said at thattime at all?

A Not on that, no, sir.

Q You have no notes about what took place five years ago or six years ago?

A No, sir.

Q Now, are you here under subpoena?

A Yes, sir.

Q Have you had any discussions about your testimony with the prosecutor?

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A Yes, sir.

Q When did you have your discussions with him?

A In his office, sir.

Q When, sir?

A On the 8th, I believe two days ago, sir.

Q Two days ago?

A Yes, sir.

Q Is that the only conversation or discussion you had with him?

A No. Also last week, I believe it was Friday, sir.

Q Friday of last week. What about prior to that?

A I don't believe so, sir.

Q The only conversation you had about the testimony you are giving here was just on two occasions with the prosecutor?

All I'm trying to say within, say, this year. I don't recall how far back they may have spoke to me. I did come down to give a statement to the jury, to another jury --

THE COURT: You mean a grand jury?

THE WITNESS: Yes, sir. That's the limit to that.

MR. BRUCE: If I may just take one moment,

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your Honor.

(Pause)

Q Now, speaking about the time you gave testimony in this courthouse, do you recall that on the 22nd day of April, 1975, appearing before the grand jury in connection with this matter?

A I don't remember the exact date but, yes, I appeared.

Q And, sir, do you recall being asked certain questions as to the amount that was requested of you as to carbines?

MR. CAREY: Objection, your Honor.

THE COURT: Yes. That's not the proper way to use grand jury minutes for impeachment purposes. If he testified inconsistently here with what he told the jury, you may ask him did he state this question and give this answer and give the page for the record.

Q On page JJP-2, one-third down the page:

"Q Did John Jankowski request that you purchase for him 50-.30 caliber M-1 carbines?"

In response to that did you make this answer:

"A Yes, he did."

Do you recall that, sir?

A I honestly don't recall.

Q Now, this testimony, sir, was given just about one year ago; is that correct?

A Approximately, yes.

Q Isn't it so?

A Yes.

Q No doubt about that?

A You stated the month, sir.

Q And yet still you would come to this court some six years later --

THE COURT: Don't ask questions like that. You know better than that. Let's go forward with this trial.

MR. BRUCE: Thank you, your Honor.

Q Didn't you testify that Mr. Jankowski asked you for 100 to 500 carbines?

A Yes, sir.

Q In a conversation that took place six years ago?

A Yes, sir.

Q And isn't it a fact, sir, that you gave testimony in this very courtroom one year ago when you stated 50 carbines; is that correct?

THE COURT: Not in this courtroom.

MR. BRUCE: I beg your pardon, your Honor. In

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this courthouse.

A May I answer that?

Q Yes or no, sir.

A I'm not sure. May I answer that?

THE COURT: Yes, you may answer.

THE WITNESS: Thank you, sir.

There are times that my memory will not hold to whether it could have been 50 or 100, but as I recollect now it was 100. I may have stated it was 50 then, but my recollection now is 100. That's all I'm trying to say, sir.

When you said I had made a statement --

Q I'm not asking for a colloquy between us. You have answered the question.

Again I ask you does that question and answer refresh your recollection as to that question and answer that was made one year ago in this courthouse?

A I'm sorry, I don't recall the amount.

Q You don't recall the amount?

A I don't recall whether it was 50 or 100.

Q But you come in here today --

THE COURT: Don't argue like that with the witness.

Q You did say that he asked you for 100 to 500;

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is that correct?

A That is my recollection now, sir.

MR. BRUCE: I have no further questions of this witness.

THE COURT: Mr. Durkan?

MR. DURKAN: Just a few.

CROSS EXAMINATION

BY MR. DURKAN:

Q Mr. Clearwater, in thisperiod of May or June in which you first had a contact with Mr. Jankowski, was that the first time that Mr. Jankowski ever placed an order with you for guns?

A Yes, sir.

Q And in response to his call you went to his store and went into the back room?

A Yes, sir.

Q And how long were you talking to him about the order before you said to him, "Do you want them registered or unregistered?"

A I'm sorry, sir, you are making a statement as to the way it was coldly presented. In conversation many times when you talk to someone you will say well, are these legal guns?

THE COURT: I think you must listen to the question again. If you cannot answer it or do not under-

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stand it you may say so but do not try to explain how the question should be put.

Q My question, Mr. Clearwater, is how long were you talking to Mr. Jankowski on the occasion of this first order from Jankowski when you said to him, "Do you want them registered or unregistered?"

MR. CAREY: I object to the question as to form.

THE COURT: I don't see anything objectionable about the form. If the witness understands the question I will permit him to answer it.

A It was after he had asked for the 50 to 100 carbines. I'm sorry, the 100 carbines. Then I asked him, yes, sir.

Q How long a period of time can you tell us were you there talking to Mr. Jankowski about this business deal before you put that question to him?

A Approximately fifteen, twenty minutes, sir.

Q So for fifteen or twenty minutes in the negotiation of this order, whether it be for 50 or 100 or 500, the first suggestion in words of any illegal or illicit deal comes out of your mouth; is that a fair statement?

A In time, yes.

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Q Yes or no, sir?

A Yes.

Q And forthwith you headed straight for the telephone to call Special Agent Quinn; is that correct?

A It is not quite correct.

Q Well, within an hour or a week you were on the telephone to tell the agents about the find you had for them; is that correct?

A No find for them, sir. This is my country and I will not permit firearms to be sold illegally.

I'm sorry, I apologize for that outburst.

Q You will not permit but you go around suggesting to Jankowski, putting thoughts in his head that maybe he would like them unregistered? Is that what you are telling us?

A I'm not exactly saying that, sir.

Q Not exactly?

A No, sir. You are saying that.

THE COURT: Don't argue with the attorney. Try to answer the questions.

THE WITNESS: I'm sorry.

THE COURT: Do I understand in 1970 you were a licensed gun dealer? Were you a manufacturer's representative of some sort?

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THE WITNESS: No, sir.

THE COURT: Did you have some kind of distributorship for some manufacturer?

THE WITNESS: No, sir.

THE COURT: Were you an exclusive agent for anybody?

THE WITNESS: No, sir. I was just a general retail sporting store.

THE COURT: Did you have a warehouse?

THE WITNESS: No, sir.

THE COURT: Were you in possession of 50 or 100 guns at that time?

THE WITNESS: Of different types, yes, sir.

Q You had quite a store full of guns at that time, did you not?

A Yes.

Q And this was not the first time that you had ever had suggestions made to you in business about unregistered guns?

A This was the first time, sir.

Q This was the first time?

A Yes, sir.

Q You had never encountered that in four years of business?

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A No, sir.

Q I'm saying it correctly --

A I'm answering you correctly.

Q Some four years of business you had never had any suggestion of unregistered guns?

A That's correct, sir.

Q You are sure?

A I'm fairly sure, yes, sir.

Q Ever have occasion to call Agent Quinn before you called after the conversation you say you had with Jankowski?

A You mean in respect to illegal firearms?

Q I mean in respect to anything, did you ever have occasion to pick up the telephone and call Mr. Quinn about the business that you were engaged in?

A I honestly don't recall.

THE COURT: Didn't you tell us earlier that you were acquainted with Mr. Quinn?

THE WITNESS: I'm trying to follow the question.

THE COURT: He is asking you whether you called Mr. Quinn prior to that day about firearm matters.

THE WITNESS: I'm nervous, so please forgive me.

THE COURT: Don't be nervous. Try to pay

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pattention to the questions and answer them.

THE WITNESS: Yes.

Q How many times?

A I don't recall the amount of times.

Q Can you give this Court and jury an approximation in the four years that you were in business as a registered dealer in firearms that you had picked up the telephone and called Mr. Quinn?

A I can only guess, sir. Maybe four, five times, sir.

Q And your calls to Mr. Quinn, were they to report to him what you suspected to be illegal dealings?

A No, sir.

Q Were they social calls?

A Some were social calls.

Q Have you gone out with Mr. Quinn on social occasions?

A No, sir.

Q Are you sure?

A To my recollection.

Q Well, think as hard as you think is necessary to tellus if you ever went out with Special Agent Quinn on social occasions?

A NO, we didn't, sir.

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Q Ever go to a restaurant together?

A No, sir.

Q Or a bar?

A No, sir.

Q How about any of the other agents in his office?

A No, sir.

Q Just Agent Quinn?

A That's right, sir.

Q Was there any arrangement between you and Agent Quinn with respect to giving him information?

A Other than Mr. Jankowski, no, sir.

Q Well, what was the arrangement between you and Mr. Quinn about Mr. Jankowski?

A As I repeat, it was to supply him with the firearms if he wanted them.

THE COURT: He is asking you of your arrangement with Agent Quinn.

THE WITNESS: I'm sorry. I misinterpreted.

There was no arrangement other than the one with Mr. Jankowski. I had no arrangements with Mr. Quinn.

Q Were you ready and willing to give Mr. Jankowski the 50 or 100 or 500 firearms without registering them, if Mr.Quinn told you?

THE COURT: I didn't hear the last part.

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MR. DURKAN: If Mr. Quinn told you.

THE COURT: I think he has answered that already but I will let him answer again.

A Yes, sir.

Q You and Agent Quinn were on very close terms at that point, were you not?

A Yes,sir.

MR. DURKAN: No further questions.

THE COURT: Mr. Carey, anything else?

MR. CAREY: Yes, your Honor.

REDIRECT EXAMINATION

BY MR. CAREY:

Q You stated that you were investigated every year. Would you please tell the jury what those investigations consisted of?

A The Alcohol and Tobacco standard procedures are to inspect all ledgers concerning handguns, rifles and shotguns as to whether the guns had been sold legally orillegally.

In other words, if there are any missing firearms, where are they? Or do I have any illegal firearms in my place of business that have not been registered? This is standard procedure throughout the United States.

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Q Where were those investigations conducted?

A In my place of business, sir.

Q Who conducted those investigations?

A Mr. Quinn and various other agents besides Mr. Quinn.

Q And how did you first come to meet Mr. Quinn?

A When I first went into business in 1966, I believe, sir.

Q And what was the occasion?

A An investigation of my books.

Q The same type of investigation you said you had annually?

A Yes, sir.

Q Approximately how many times has Mr. Quinn investigated your books?

A Oh, him himself and another agent, maybe twice. Then after that other agents came in.

Q Are youstill a licensed, federally licensed gun dealer?

A Yes, sir.

Q Now, I believe you said during a recent examinationthat you asked Mr. Jankowski in a conversation you had with him about the order of a number of carbines, whether or not he wanted them registered or unregistered;

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is that correct?

A That is correct.

Q Was that the first time that either of you had mentioned whether the weapons would be registered or unregistered?

MR. BRUCE: Objection. That's been gone into on direct and cross.

THE COURT: You went over that on your cross examination, so I will allow the question.

A I'm sorry, would you repeat that?

Q Was that the first time that either of you had mentioned whether the weapons he wanted you to purchase for him were to be unregistered or registered?

A Yes, that was the first time.

Q What if anything caused youto ask that question of Mr. Jankowski?

MR. DURKAN: Objection.

THE COURT: I will sustain it as to that form. If there was anything said or done he may tell us, but not the operation of his mind.

Q What if anything was done by Mr. Jankowski which prompted you to ask that question?

A When he requested I go into the back room with him.

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THE COURT: Were there people out in the front room?

THE WITNESS: Yes, sir.

Q You said that it was usual for you to supply weapons in large quantities to other dealers; is that correct?

A Yes. That's standard procedure.

Q Was it also standard to furnish weapons to them in large quantities unregistered?

A No.

Q In fact have you ever supplied a large quantity of rifles to anyone unregistered?

A NO, sir, or any quantity.

Q When you told the agents about the conversation you had with Mr. Jankowski, were you still in business?

A Yes,sir.

Q And for approximately how long afterwards did you remain in business?

A Ten to twelve months, sir.

Q I believe you said that --

THE COURT: Please don't summarize his testimony. Just ask the question.

Q When you testified in the grand jury, do you recall being asked this question and giving this answer --

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MR. DURKAN: Objection.

MR. BRUCE: Objection.

THE COURT: I would have to be shown the page and line before I can rule on it. Hand it to the clerk and just show him what the page and line is.

MR. CAREY: Third question from the bottom on JJP-2.

(Pause)

THE COURT: Objection is overruled.

MR. BRUCE: May we have a side bar?

THE COURT: Not necessary.

MR. BRUCE: May I be heard, your HOnor?

THE COURT: No, sir.

MR. BRUCE: Exception,your Honor.

MR. CAREY: For the record, this is the third question from the bottom or page JJP-2. It is the grand jury testimony of Mr. Clearwater on April 22, 1975.

"Q Did there come a time when in your discussions with Mr.Jankowski you discussed the purchase by him from you of a total of 500 rifles?

"A Yes, that's the amount."

Do you recall being asked that question and giving that answer?

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A Yes, sir.

THE COURT: You only went to the grand jury once; is that right?

THE WITNESS: Yes, sir.

THE COURT: On one single day?

THE WITNESS: Yes, sir.

Q With respect to your testimony here today, have you done anything to refresh your recollection?

A Yes, sir.

Q What have you done?

A My original statement to the grand jury, I did read part of it last week, but I dno't recall the entirety but I did read some of it.

Q Have you read anything else to refresh your recollection?

A No, sir.

Q Have you read part of anything else?

A No, sir.

Q I show you Government Exhibit 3540 for identification. Does that refresh your recollection whether or not you read anything else in preparing to testify in court today?

A This is a statement that I read last week, sir.

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MR. CAREY: No further questions of this witness, your Honor.

MR. BRUCE: One further question.

RECROSS EXAMINATION

BY MR. BRUCE:

Q Mr. Clearwater, when you had the second conversation with Mr. Jankowski, that was the complete total end of everything; is that right?

A Yes, sir.

MR BRUCE: No further questions.

THE COURT: The witness is excused.

(Witness excused)

THE COURT: We will take a ten minute recess at this time.

Members of the jury, withdraw to the jury room.

(Recess)

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(In open court - jury present)

MR. CAREY: The government calls Richard Anderson.

R I C H A R D A N D E R S O N , called as a witness on behalf of the government, after being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. CAREY:

Q Mr. Anderson, by whom are you employed?

A The Royal Ulster Constabulary in Northern Ireland.

Q And in what capacity are you employed?

A I'm an officer of that force in charge of Arms Department.

Q And for how long have you been so employed?

A About two and a half years.

Q And what are some of your duties in the position which you hold?

A I am responsible for arranging the disposal of firearms which have come into possession of the police and which are no longer required for police purposes.

Q Mr. Anderson, I show you Government Exhibit 7 for identification, and I direct your attention to the

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first white page in that document.

Can you identify that document?

A Yes. That is a document that normally -- that accompanies firearms coming into my possession for disposal.

Q And would your testimony be the same of the other documents which are in Government Exhibit 7?

A That would be so.

Q And do those documents each identify M-1 carbines?

A Those identify Universal M-1 carbines, yes, sir.

Q I show you Government Exhibit 8 for identification and I direct your attention to the first bound white page.

A That is a disposal order authorizing me to dispose of the weapon.

THE COURT: Please speak up. We can't quite hear you.

THE WITNESS: Yes,your Honor. That is a disposal order which authorizes me to dispose of the weapon.

Q Do these documents in all cases accompany the weapons?

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A They do, yes.

Q Would your testimony be the same with respect to each of the documents in this binder?

A It would. That is so.

THE COURT: I can't hear you.

THE WITNESS: That is so, your Honor.

THE COURT: Please speak up nice and loud.

Any members of the jury during this trial, if you ever can't hear a witness, please raise your hand and say I can't hear.

Q Are all of the weapons for which you received disposal orders in your official capacity always in your possession at that time?

A Not always.

Q And where are those weapons when they are not in your possession?

A They are probably in transit between a police department and my department.

MR. DURKAN: Object to what they are probably, your Honor.

THE COURT: Overrule the objection. I understand he is talking about his regular course of business, not about any specific firearm at this time.

MR. CAREY: For the record, your Honor, these

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weapons have all been cleared.

Q I show you what has been marked Government Exhibit 14 for identification. Please examine that.

A Yes, sir.

Q Can you identify that?

A Yes, I can identify this weapon, sir.

Q How can you identify it?

A This label, a pink label encased in a metal case and sealed was put on under my direction and under my supervision by a member of my staff in Northern Ireland.

A second point, on the bottom of the trigger guard there is a special mark which was put on in my presence by a police armorer, which denotes that I saw that stamp being put on there.

Q Would your testimony be the same with respect to Government Exhibit 17 for identification?

A That is so.

Q Would your testimony be the same with respect to Government Exhibit 16 for identification?

A That is so.

Q Would your testimony be the same with respect to Government Exhibit 13 for identification?

A That is so.

Q Would your testimony be the same with respect

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to Government Exhibit 15 for identification?

A That is so.

Q Are all of these weapons weapons which are in your custody in your official capacity?

A They are.

MR. CAREY: Your Honor, the government offers Government Exhibits previously identified by the witness, in evidence.

THE COURT: When and where did those exhibits first come into your personal possession and custody in your official capacity?

THE WITNESS: I could not, your Honor, give precise dates, but they are weapons which have been used for police purposes and are no longer required as such and brought to me for disposal.

MR. CAREY: Your Honor, those exhibits are Exhibits 13 through 17. The government at this time also offers at this time in evidence Government Exhibits 7 and 8.

MR. DURKAN: I object to it, your Honor.

MR. BRUCE: Objection, your Honor.

THE COURT: Are you able to tell me when those came into your possession and where? Where geographically did they come into your possession?

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THE WITNESS: In Northern Ireland.

THE COURT: When? Can you give us the year?

THE WITNESS: I could not, your Honor.

MR. CAREY: Your Honor, perhaps I can clarify this.

THE COURT: Perhaps it ought not be discussed in front of the jury. You may frame another question.

Q Mr Anderson, I show you Government Exhibit 7, the documents you previously identified.

Does each of these documents indicate where the corresponding M-1 carbine was obtained and approximately when?

A It does.

THE COURT: May I see them, please?

MR. CAREY: Certainly, your Honor.

(Handing)

(Pause)

THE COURT: I will overrule the objection. They will be received in evidence.

(Government's Exhibits 7, 8, 13 through 17, are received in evidence)

THE COURT: Before you rule on that, your Honor, may I examine on voir dire on those?

THE COURT: Yes. I'm assuming that the yellow

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sheets of paper with the paper clips are going to be eliminated from the exhibit.

MR. CAREY: Yes, your Honor.

THE COURT: They don't properly belong on there. Before the jury can look at them they have to be taken off. They can be left there for the present.

VOIR DIRE EXAMINATION

XXX

BY MR. DURKAN:

Q Directing your attention to Government Exhibit No.7, would you tell me again what is that a record of?

A May I open it, please?

Q Yes.

A This is a record that a firearm described on the form came into the possession of the police. The form is completed by the police and passed to a department of forensic science for examination by them.

Q And is the information that is contained on the form in relation to each weapon, is that information that is supplied by somebody else other than you?

A That is so, by the finder.

Q And do I understand it correctly, sir, you are not the finder?

A I am not the finder.

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MR. DURKAN: I object to its admission, your Honor.

THE COURT: Are those records regularly kept by the department over there, by the Police Department or its equivalent?

MR. CAREY: Your Honor --

THE COURT: I was really asking the witness that, but you may proceed further, Mr. Carey.

MR. CAREY: The witness intentionally has not been qualified as the custodian of these documents. As they presently exist the certifications at the beginning of the exhibits are the foundation for the government's offer.

THE COURT: I am taking them merely to show at a particular point in time these weapons were found in Northern Ireland.

As far as the rest of the entries therein are concerned, I am not taking that as evidence of the truth thereof.

I will add here to my prior ruling. The exhibits are received solely for the purpose of showing the particular guns were found there at a point in time after May 1970.

MR. DURKAN: If your Honor pleases, I take

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exception to that. The testimony is he does not know when they came into his possession.

THE COURT: The dates are in the book.

MR. DURKAN: I respectfully except, your Honor.

I inadvertently carried back Government's Exhibit 8.

Q Mr. Anderson, will you tell us, will you tell us what that book is again, now directing your attention to Exhibit 8?

A This book contains copies of orders of disposal which are addressed to me to dispose of a weapon. The signature given is the date on which it was signed by the officer authorizing disposal.

I cannot say the precise date on which the weapon plus the document arrived in my department.

MR.DURKAN: I have also an objection to Exhibit 8, your Honor.

THE COURT: Same ruling.

MR. BRUCE: I do also, your HOnor.

THE COURT: Any objection Mr. Durkan takes will apply to you, Mr. Bruce, and vice versa.

Anything else for this witness, Mr. Carey?

MR. CAREY: No, your Honor.

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THE COURT: As I understood it, you personally saw this mark made on this receiver or trigger guard, or whatever it is there.

THE WITNESS: That is so, your Honor.

THE COURT: In what geographic place did you see that mark placed on there?

THE WITNESS: It was made in my department in Northern Ireland.

THE COURT: Therefore, the firearm was there at that time when that mark was made?

THE WITNESS: I personally saw that mark being made, your Honor.

THE COURT: Were they in all cases made after May of 1970?

THE WITNESS: Yes, your Honor.

THE COURT: All right.

Anything else? Any cross examination?

MR. DURKAN: Yes, your Honor.

CROSS EXAMINATION

BY MR. DURKAN:

Q Mr. Anderson, directing your attention to Government's Exhibit 8 which is in evidence, will you state before the jury, taking them in the order they are numbered, and I believe the first exhibit is 13.

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A Exhibit 13.

Q Can you tell me, Mr. Anderson, where is that particular Exhibit 13 referred to in Government's Exhibit 8? And if there is a serial number would you read it off, please.

A Serial Number on this weapon is 172218.

Q Now, where is that referred to here, Mr. Anderson?

A One M-1 carbine No. 172218 (indicating).

THE COURT: Would you indicate a page number for the record.

MR. DURKAN: They are not numbered, your Honor, but I notice the serial number is on a tag on each. I have just noticed it.

THE COURT: All right.

Q Thank you, Mr. Anderson. I just wanted to get my sequence.

(Pause)

Q Mr. Anderson, would you please again taking the weapons in order in the way they are exhibited, would you read the serial numbers off, please? You gave us -

THE COURT: Excuse me, is that necessary? Because any attorney can read off the numbers if he wishes.

I will permit you to read off the numbers for

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the court reporter if you want to.

MR. DURKAN: Then I withdraw the question.

THE COURT: They all have exhibit tags and the numbers can be read into the record by any attorney who wishes to do so, including the United States attorney.

Q Now, Mr. Anderson, these guns came into your possession and you marked them for return back to the United States.

A That is so.

Q And that was within the past twelve months?

A Yes.

Q Now, is it a fact, sir, they were being used for police purposes prior to their being turned over to you for disposal?

A Yes, I can say that. They were subject to full police investigation before they were released to me.

Q Well, when they were being used for police purposes do you yourself know precisely the purposes for which they were being used?

A No, sir, I do not.

Q To your knowledge, sir, were any of them being used by policemen in the furtherance or in the course of their official business as policemen?

THE COURT: You mean by that were they using

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them as a firearm?

MR. DURKAN: That's right.

THE COURT: Do you understand his question?

THE WITNESS: If I couldput it this way, your Honor, they were subject to the normal investigation that the police force would put to a weapon which comes into their possession.

THE COURT: Were policemen carrying these weapons as weapons in the discharge of their duties as policemen?

THE WITNESS: No, sir, they were not.

Q Do you know this of your own knowledge?

A I do.

Q Is it not a fact, sir, they came into your possession in the past twelve months?

A The precise dates which each came into my possession I cannot say.

Q Well, do I understand it correctly before they came into your possession they were being handled by other members of the Royal Ulster Constabulary?

A By other departments, crime department especially.

Q And to your knowledge, sir, were any of these guns in the possession of the British Army?

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MR. CAREY: I will object. This inquiry is irrelevant.

THE COURT: Well, I think it is irrelevant, but I would take it if there is a showing of relevancy. If you want to make a showing at the side bar you may do so.

MR. DURKAN: Yes.

(At the side bar)

THE COURT: As far as I can see all that was sought to be proved by this witness is that there was a certain point in time when these weapons were physically present in Northern Ireland. That's all. As far as anything in those books about criminal use of the weapons or when and where they were seized, from whom or by whom, has nothing to do with the theory of this indictment.

The crime charged in the relevant count is one of export. It really doesn't matter who used them. All this witness can testify to is that when he marked these weapons they were in Northern Ireland and not in Canarsie.

MR. DURKAN: I understand that, Judge. The point of my inquiry is to establish whether or not these weapons had been used by any of the legal authorities, whether it be British Army or --

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THE COURT: It wouldn't matter, would it, for purposes of this case?

MR. DURKAN: I think it might establish or might raise the question as to whether or not they were in fact exported.

THE COURT: They didn't get there by attraction from the North Pole. They got there by some human intervention, did they not?

MR. DURKAN: That's right.

THE COURT: It would not matter for purposes of this case whether they were used by the British Army or by some sportsman in the country or by whom.

MR. DURKAN: The inference, I think, could be drawn, if it was shown they were in fact being used for the so-called "legal" purposes of the government of Northern Ireland --

THE COURT: Let's assume they were used by a sportsman for lawful purposes, it wouldstill be a violation of these counts here. It is the export or aiding and abetting of export that is a crime without a license. Has nothing to do with what they did with the guns.

You might open the door and then we will have a lot of floundering around as to what they were used for. I think that would be most unappropriate and unwise. I

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don't see any relevance.

MR.DURKAN: May I have a moment with Mr. Bruce?

THE COURT: Certainly.

(Pause)

THE COURT: I would be delighted for you to give me an offer of proof of what you intend to show.

MR. DURKAN: There is a lot of stuff in those two exhibits. Of course I find it personally very interesting, but I would like some time to take a look at it and not for the personal interest. It may turn up something crucial to my cross examination of this witness and I don't want to interfere with your Honor's plan for a schedule, but would this be an appropriate time to take a lunch break to give me a chance to look at it?

THE COURT: I think any looking at it ought to have some restrictions placed on it for your own sake, so that no finger will be pointed in the future that any material was taken out of here that resulted in an unfortunate result.

MR. DURKAN: Agreed.

MR. CAREY: I would like to point out for the record, these records were available at the very outset

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of the trial.

I believe after I called the first witness the documents were offered to Mr. Durkan, Mr. Holman and Mr. Bruce.

MR.DURKAN: Not to me.

MR.HOLMAN: I deny that.

THE COURT: What is the schedule for leaving?

MR. CAREY: Placed on the desk and left for inspection.

THE COURT: What is this schedule for leaving?

MR. CAREY: He said at the pleasure of the Court, your Honor.

THE COURT: I think maybe I willrecess for lunch and I will permit you to examine them on this theory: That you are to do them in the courtroom. The examination is to be restricted to the attorneys, and I am going to request you to make no notes except those that may be absolutely necessary for relevant inquiry. Any such notes are to be destroyed.

MR. DURKAN: I wouldn't even make notes.

THE COURT: I give you that as an officer of the Court, you see, if data or information comes from another source, you do not want the suggestion to be that it came from you.

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MR. DURKAN: I give you my undertaking that I will reveal nothing on it.

MR. CAREY: I have requested from Mr. Holman, and I would like to request on the record now, that the attorneys return the 3500 material after the government rests its case.

THE COURT: That is the ordinary rule in the courthouse.

MR. CAREY: As well as any copies they may have made.

THE COURT: They will.

MR. HOLMAN: I look at that question last night after Mr. Carey requested me not to photocopy. No authority for that.

THE COURT: That is our standard procedure.

MR. DURKAN: We will give them back and will make no copies, your Honor.

(In open court)

THE COURT: We are going to recess for lunch at this time. I ask you please to return at 1:30 when we resume the trial. You may withdraw from the court.

You, sir, may step down from the court.

(Jury leaves the courtroom)

(Witness excused)

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CONTINUED CROSS EXAMINATION

BY MR. DURKAN:

Q Mr. Anderson, do you know of your own knowledge whether or not any of these weapons that have been introduced into evidence were operable at any time while you saw them or while you had them?

A Not operable at all. They were stored purely and simply.

THE COURT: He means do they work? Can you fire them? Operable, are you able to put ammunition in, point them and pull the trigger, fire them?

THE WITNESS: That is not my function, your Honor.

Q So that from the time you first got them up to the present day they have been inoperative, can't fire?

MR. CAREY: Objection, your Honor.

THE COURT: It is cross examination. If the witness knows he can answer the question.

Q If you know, sir.

A I would say no, they have not been in use at all.

THE COURT: I am afraid there is a difficulty over the use of the word inoperable. I think you should define for the witness what you mean by inoperable.

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Q Mr. Anderson, to your own knowledge were any of these guns capable of firing as a weapon from the time they first came into your possession up to the present date, to your own knowledge?

A They were capable of being fired I would say.

Q Were they in a mechanical condition to be fired?

A Yes.

Q And did you see that yourself?

MR. CAREY: I object to the question as vague. See what?

THE COURT: If the witness doesn't understand the question he may say so.

Have you inspected these weapons yourself? Have you looked at them?

THE WITNESS: I have seen them, I have handled them, your HOnor, but I have not physically tested them to see if they work from that point of view, sir.

Q Sir, what you have just told us now, prevailed from the time you first got them up to the present day?

A That would be so, sir.

Q You do not know, sir, of your own knowledge whether or not those guns were ever capable of being fired, of your own knowledge?

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A I do not.

MR. DURKAN: Thank you.

THE COURT: Do you have any questions, Mr. Bruce?

MR. BRUCE: Perhaps a few, your Honor.

CROSS EXAMINATION

X XXX

BY MR. BRUCE:

Q From your notes, Mr. Anderson, or recollection, and to the best of your knowledge, can you pinpoint a day in time when those weapons came into Northern Ireland?

A I cannot.

Q What day would that be, sir?

A I cannot.

Q You cannot, I'm sorry.

A I beg your pardon, I cannot state the date.

Q Now, when these weapons first came into your possession, when was that, sir?

A I cannot state a precise date on which they came into my possession.

Q Thank you, sir. The weapons that have been exhibited here in court, were they tested in your presence for their ability to fire a bullet?

MR. CAREY: Objection, immaterial.

THE COURT: Overruled. He may answer it.

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A They were not so tested.

Q To your knowledge were they ever tested?

MR. CAREY: Objection.

THE COURT: As to his own personal knowledge the witness may be asked.

A I cannot say to my knowledge.

Q To your knowledge do you know if those weapons are capable of discharging a bullet today?

MR. CAREY: Objection.

THE COURT: Hasn't that been asked and answered already?

MR. BRUCE: I'm sorry. No further questions of this witness.

MR. CAREY: No redirect.

THE COURT: You are excused, sir.

(Witness excused)

MR. CAREY: The government calls Gunnar Erickson.

G U N N A R E R I C K S O N , called as a witness on behalf of the government, after being duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. CAREY:

Q Agent Erickson, by whom are you employed?

A Bureau of Alcohol, Tobacco and Firearms,

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of $75 for a total of $750.

You will find that the serial numbers of Government's Exhibits 13 through 17, that is, the other four in addition on 1 listed to Frank Grady's name compare to serial numbers listed on either pages 9 or 11 of the Federal Firearms Record at John Jankowski's place of business.

Government's Exhibits 7 and 8 taken together indicate the following:

That serial number 172218 was seized in Northern Ireland. Serial number 169173 was seized in Northern Ireland. That serial number --

MR. DURKAN: Just a moment. With the Court's permission --

THE COURT: Yes. You can stand anywhere where you're not between the jury and the exhibit.

MR. DURKAN: I just want to confer with him.

(Pause.)

THE COURT: Where are Exhibits 7 and 8, please?

MR. CAREY: Your Honor, on the counsel table.

THE COURT: Please hand them to me.

(Pause.)

THE COURT: Thank you.

MR. DURKAN: If your Honor please, I think we

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better have a side bar on this.

(At the side bar.)

MR. DURKAN: Your Honor, at the luncheon recess I copied with Mr. Holman the serial numbers off the weaponry that is presently in court, and the first one, Exhibit 3 --

THE COURT: 13.

MR. DURKAN: Exhibit 13, bearing serial number 172218 has been correctly read off by Mr. Carey as having been found in NOrthern Ireland. The next number he read off is not included in the serial numbers on the weapons in court. But Mr. Carey apparently is going to read all the information of guns even though they are not here, and I am going to object to it.

MR. CAREY: That's correct, your Honor. The documents which are already received in evidence are the evidence that they were seized in Northern Ireland.

MR. DURKAN: That was not the purpose they were offered for.

THE COURT: Don't lets lose the thread here. Which gun number is it that you contend was found in Ireland and he contends was not?

MR. CAREY: I don't believe he contends any gun that I would mention was found in Ireland was not. He is simply observing that certain of the weapons found in

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Northern Ireland have not been brought to the United States for the purpose of admitting them in evidence for the trial.

THE COURT: You are just relying on certified Exhibit 8?

MR. CAREY: Yes, your Honor.

THE COURT: I think he can do that.

MR. DURKAN: If your Honor please, we now have an Exhibit 8 in which has a certification by somebody who we don't know, who certifies that he saw those guns.

THE COURT: This is a public record, isn't it, under a seal?

MR. CAREY: Yes, your Honor.

THE COURT: Isn't it admissible for whatever weight the jury wants to give it?

MR. DURKAN: It has the seal of Mr. Flannagan, the Chief of the Royal Ulster Constabulary --

THE COURT: I don't think I have to read both weapons. You don't have to read the entire list to the jury at this time.

MR. CAREY: I am not going to, your Honor. I am going to indicate to the jury, your Honor, what the evidence already received indicates about the weapons sold by Mr. Jankowski.

THE COURT: I think you would be better simply

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to tell them that there are weapon numbers on here and save the rest of it for summation. If need be, I will give you enough time to track them down one by one.

MR. CAREY: I did not want to do that in my summation, your Honor.

THE COURT: If it is in evidence, it is one thing to read an exhibit to a jury. It is another thing to say that this exhibit shows such and such, even though the inference is indisputable. That is really summation. If you want to tell them in this column are the serial numbers of the weapons and in this column is such and such, that you can do. But as far as asking them to draw an inference and asking them to connect the two of them together, that in my opinion is summation, unless everybody else agrees on it.

MR. DURKAN: At the moment he is not going to read these others. I have no objection to him reading them in as serial numbers of the guns that are in court, but serial numbers of guns that have ceom from a document from Mr. Flannagan --

THE COURT: We will come to that later. He is going to tell them what these exhibits show, which columns the numbers are in, etc., but he is not going to ask them to draw any inferences.

(End of side bar.) 386a

(In open court.)

MR. CAREY: I invite the jury to compare the figures in Exhibit 9, the column of serial numbers, with those listed on documents numbered Government's Exhibit 7 and 8. If you do so you will find a similarity of serial numbers with respect to eight weapons on this page.

If you compare in addition the weapons themselves which are present in court, you will find that the weapon identified by serial number 172767 purchased by John Casey is one of those which is present in court, having been seized in Northern Ireland --

MR. DURKAN: If your Honor pleases, I would like counsel to adhere to your Honor's ruling at the side bar.

THE COURT: Yes. For the timbeing, we will merely call the attention of the jury to what these documents are but not draw any inferences or make any summations based on them.

MR. CAREY: With respect to the last weapon identified as having been received from Roskin Brothers on Government's Exhibit 9A, you will also find that that serial number is identical to the one in court.

With respect to Government's Exhibit 9B, you will see that --

MR. DURKAN: If your Honor pleases, we are still

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doing the same thing.

MR. CAREY: I'm sorry, your Honor. I am trying to adhere to your Honor's ruling.

THE COURT: You can tell them what that paper is, what the columns are and don't ask them to draw any inference from it at this time.

MR. CAREY: I will not, your Honor.

I ask you to compare the information which appears at the line beginning with the word "Universal," in the left margin and down on that page 10 and 11 with that which is on Government's Exhibit 2, the second Roskin Brothers invoice, and compare the serial numbers.

I also invite you to compare the serial numbers on this page with those listed in documents Government's Exhibits 7 and 8. You will find that four weapons are listed in the documents marked 7 and 8 with serial numbers identical to those on this document.

If you compare the serial number with the first Universal which indicates a sale to John J. Horrigan, with one of those weapons in court, you will find the serial number is the same. If you compare the final serial number, 170633 on page 10 of Government's Exhibit 9B, you will find that that weapon is also in court.

Would your Honor like the government to call its

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A.M.

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UNITED STATES OF AMERICA

V. 576 Cr. 227 CLB

FRANK GRADY and JOHN JANKOWSKI

March 11, 1976
10:25 A. M.

- - -

(Jury absent.)

THE COURT: Is there anything further at this tim before I hear the motions?

MR. CAREY: Yes, your Honor. The government move to reopen its case for the purpose of requesting the court to take judicial notice that a 30 caliber semi-automatic rifle, such as those introduced in evidence in Government Exhibits 13 through 17, is a rifle which is on the United States munitions list.

THE COURT: Could I see one of those exhibits?

MR. CAREY: One of the rifles?

THE COURT: Yes.

MR. CAREY: Sure.

(Handing)

THE COURT: I don't believe anybody disputes that, do they?

MR. CAREY: I don't think so.

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(Pause)

THE COURT: You are relying on 22CFR 121.01(a) aren't you?

MR. CAREY: I believe that is correct, your Honor.

THE COURT: That is a matter of law. I don't think I even have to take any judicial notice of that.

MR. CAREY: Your Honor, it's a matter of law that that weapon is on the United States Munitions List. But as a element of proof, it is also an element of proof which the government must introduce as evidence. Therefore, the government requests that judicial notice be taken, so that that element of proof is satisfied.

THE COURT: What am I to notice? That 30 is less than 50?

MR. CAREY: No, just that that weapon is on the list, I believe it's a semi-automatic rifle --

THE COURT: Fire arms to caliber 50 inclusive. All right.

Which counts of the indictment are represented by the rifles that we have in court?

If you want to come back to that, I will hear the motions at this time.

MR. CAREY: Yes, your Honor.

THE COURT: I don't have the serial numbers of the

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exhibits on my bench. All right, Mr. Durkan, you may be heard.

MR. DURKAN: If it please the court, the defendant Grady moves at this time for the dismissal of the indictment and a judgment of acquittal. Let me rephrase that, your Honor. I move for a judgment of acquittal on behalf of Mr. Grady and against the entire indictment for the following ground, which I would like to elaborate for the court.

Your Honor of course is aware that this is an indictment for a conspiracy charging my client with a conspiracy in substance with Mr. Jankowski and others to falsify records. In substance that is why the conspiracy is charged. And then, leading on from that conspiracy count all the way down to the second last count before the substantive count of leading from this conspiracy of falsifying records in order to obtain those guns. And the basis for the indictment seems to me to be that they misrepresented to the firearm dealer, or at least misrepresented in terms of filing these papers, in order to deceive the government and the people who have jurisdiction over the gun dealer, to deceive as to the identity of the "true dealer," which are the words of the indictment.

If your Honor will remember, and it's as clear to you as I am sure it is to me, every single witness that the

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government has called, starting with O'Brien right through to the last unindicted co-conspirator, Mr. Casey, has testified that in the beginning, back in either early 1970 or late 1969 a plan was formulated among these men because of their concern about what was happening in Northern Ireland. A plan to do what?

A plan to purchase weapons. And the plan was developed that the weapons would be purchased from Mr. Jankowski after an initial approach was made for the purpose of transacting the deal.

The charge is that in dealing with Jankowski these men and Jankowski entered names into the book which obscured the identity of the true purchaser, and I submit to the court that on the contrary, the very men who formulated the plan, each and every one of them went up and signed his name opposite a serial number for the guns in question.

I will submit to the court that if I or you or anybody else as a reasonable man wanted to deceive the gun dealer or the deceive the government, certainly the way you don't do it is to go up and sign your name and address and put down your date of birth and put down your social security number.

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That is precisely not the way to do it. If they went up and signed John Smith or Joe Brown, I would say that is some attempt to deceive the Government. But the man who formulated the plan, who talked about it, the man who conferred about it was the man who ultimately went, and I press this point very closely, your Honor, because they are the men who went one after the other, whether it be on the 4th or 5th or 9th of May makes no difference. Each and every one of them went up and signed his name without any single, solitary attempts to deceive.

The Government's argument, of course, that would be the Government's argument. But in the indictment as charged here, and I would again draw your Honor's attention, the indictment charges a conspiracy not to export arms illegally; the indictment charges a conspiracy to falsify the records so that the identity of the purchaser will be hidden or will not be revealed. And I submit it's absolutely false.

There is no proof here except to the contrary that each and every one of these men went up in full and open view and signed his name revealing himself as he was, revealing himself not only as to name and signature, address, date of birth, and so on and so forth. And the government, I submit, your Honor, tortured out an

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indictment from the Grand Jury on the basis -- on what kind of language, I know not. But certainly this at the very best, the facts as presented in this case are equally consistent, and I am giving the Government the best of it on this argument, are equally consistent with innocence or guilt as we have in this case, and that is as I say stretching it to give the Government every possibly latitude.

But from a reasonable point of view, from where I sit, and I am sure hopefully where the jury will sit if they get the question, these men did not attempt to hide their identity. It was their plan, they started it, they set it in motion, they went up, signed their names, they identified themselves, and ultimately some of them, according to the testimony, got the guns. But that is another part of the indictment.

Insofar as the falsification was concerned, there was no falsification. And I would move, your Honor, that that conspiracy, and as I say again, maybe I am emphasizing the negative aspect of it, it is not a conspiracy to export, it is a conspiracy to falsify records. God knows, the Government, Mr. Quinn and Mr. Eigen, didn't have any problem at all in identifying who purchased these guns. All they had to do was go to Mr. Jankowski's

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3 slsr

record book and there it was, starting with Grady, Mr. McCarthy, -- the whole lot of them down the line.

Not a single, solitary misstatement or misrepresentation or misinformation was given and recorded on those exhibits. And I submit, your Honor, that to let this case at this juncture on this flimsy spider web of insinuation go to the jury, is a miscarriage of justice. Of course, as I said, your Honor, with the conspiracy leading from that are the other counts which are I believe Counts 2, 3, 4, 5, 6, 7, 8, 15, 16, and 17.

I submit, your Honor, that that is really stretching it, to say that this course of conduct has presented to this Court a violation of the law as it is written in the statute books.

If your Honor please, I don't know whether you want me to take them up, there is then the export count --

THE COURT: I think I will hear all your motions. If I feel it necessary to interrupt you, I will do so. I have been attempting not to do so so that you could make your presentation in a more coherent fashion. But go ahead.

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MR. DURKAN: Your Honor, much may be made of what I objected to in going in, and that was the so-called transfer slips that were signed. If any interpretation can be taken from the transfer slips in relation to this particular charge here of falsification, I don't see any relationship at all in terms of the indictment charged. This was something that happened afterwards, and if it be interpreted in any way by the jury, I would submit that we can interpret that these men insisted on recording and maintaining their right to possession and ownership.

I think one of the witnesses, McMorris, told this Court about his concern that somebody was running around with "my guns."

THE COURT: Which was the witness with the blue Rambler?

MR. DURKAN: That was Mr. Casey. Now, of course, Mr. Casey, your Honor, insofar as the falsification of records is concerned, Casey is hand in glove with the rest of them. As a matter of fact, I think Mr. Casey was the strong talker. He was the man to make sure that O'Brien was going to go through with it when he was having qualms about it.

THE COURT: Viewed most favorably to the Government, a jury could infer that these subsequent

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transfer documents were made out to a deceased person. There is some evidence that one of the co-conspirators so stated, and that it was part of the intention all along at the time the book was signed, to fill out these elusory transfers and to put Mr. Casey and others in a position so that when and if the inspectors did come they could say, as Mr. Casey initially told the firearms inspectors, that he had resold the gun. He didn't like it any more and he resold it to a gentleman and he drove in his blue Rambler down to Jerome Avenue and gave it to Mr. Armstrong, and he doesn't remember who Mr. Armstrong is.

There the chain ends, I think without those subsequent transfer slips -- perhaps I shouldn't commit myself on the point without having heard anybody, but I think those subsequent transfer slips are and essential part of the conspiracy which is charged, without which you might conceivably argue that the people bought the firearms and then resold them.

MR. DURKAN: If your Honor pleases, may I interrupt you there?

THE COURT: Surely.

MR. DURKAN: The indictment here does not charge something beyond the records of Mr. Jankowski.

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THE COURT: I'm not sure that is so.

MR. DURKAN: If I may, your Honor, let me read --

THE COURT: You see, I am looking at No. 4, Paragraph 4 of the second page here, and I think that that is the real gist of what they are trying to charge here. In other words, a false trail was created whereby it would look as if nobody had more than two guns, which is not suspicious or anything bigtime, and that each of them tired of their guns and sold them to Mr. Armstrong, or whoever it was on the different slips, and it would have been a sale trail to follow because in Casey's case it really was. He gave them the proper story. Apparently the first time they interviewed Mr. Casey they believed him.

MR. DURKAN: On that particular point, if your Honor pleases, the conspiracy here, insofar as a violation of law is concerned, the violation of law charged here is the falsification of Jankowski's records. Now, what they did afterwards, if they filed them illegally someplace, that is another violation of law, if in fact it is. I submit to the Court at this time the falsification of Jankowski's records, once those guns, once those guns leave him and are taken over by the people that buy them, the indictment here falls or stands at that point.

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Whether they kept them for an hour or a day or a month or a year after that and then signed transfer slips makes no difference. The violation of law here, your Honor, and this is the point I wish to emphasize, the violation of law here is the law that requires records to be kept by the gun dealer for the Government.

THE COURT: The violation of law here is a conspiracy or agreement of two or more persons, one of whom is said to be your client. Putting it in simple language, to take up the firearms records of Jankowski's store and destroy, obliterate or leave a false trail. Either to destroy the trail whereby the firearm can be traced from Hialeah, Florida, to wherever it is found, or to obliterate that trail.

I think you have to read the indictment very narrowly and you have to take the whole scheme. I don't think that just asking your friends to go down and buy guns is a crime, if in fact they did do that.

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MR. DURKAN: If I may read paragraph 4. "It was further a part of said conspiracy that Grady would issue to each person, whose name was entered in the log book as described above, a document which indicated that each such person had transferred to a third party the 30 caliber semi-automatic rifles shown in the log book."

What violation of law is the government charging? I say there is no violation of law in that. The violation they charge and that they have narrowed out in this conspiracy is a violation to doctor up Mr. Jankowski's books. Either they did or they didn't. And if they didn't, he should be acquitted. If they did, and the jury so finds, he should be convicted. But I submit to this court that as it stands now, in the posture of the proof presently presented before this court, there is absolutely not a single whit of evidence to show that these men conspired to change the records or falsify them.

On the contrary, you might say in hindsight that it was a pretty foolish thing to do, but in their non-expertise, considering what motivated them in the first place, they went and did it wide open. Absolutely you would have to be deaf, dumb and blind to not know who they were who bought these guns.

THE COURT: Mr. Casey's cover story was entirely

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believeable. If it be assumed it was part of the conspiracy to have these guns go out two at a time to reputable people who signed their right name, who as to most of them never paid themselves, never had actual possession of the weapon, never picked the weapon out, never held it in their hands, never delivered it anywhere as far as we know, and then the chain of title or the trail of the weapon gets into the hands of a deceased person, and they met under the elevated on Jerome Avenue in the Blue Rambler, and that means that a person finding that gun, wherever it be found, whether it be found in Northern Ireland or found in South Brooklyn, but a person finding that gun would not be able to trace where it went between the manufacturer and the point where it was found, which is the sole purpose of this type of registration, or at least the primary purpose of this type of registration.

MR. DURKAN: Your Honor, that is not what is charged here. What is charged here is falsification of Jankowski.

THE COURT: That is right.

MR. DURKAN: And there was no falsification of Jankowski's records. On the contrary, everything was absolutely true.

THE COURT: Well, it wasn't true because it was not true, at least viewing it most favorably to the govern-

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ment, and I don't have to resolve any credibility issues for these motions, but viewing it most favorably to the government, at least some of these people who signed were not in fact the transferee of the gun and were not ever intended to be the transferee of the gun, never bought or paid for the gun, never held it in their hands, never had actual possession, never had constructive possession. They just went in, signed on the line that was indicated to be signed.

MR. DURKAN: They knew what they were signing for and they were part and parcel of the original formulation of the plan. They knew when they went in and signed their name they were signing for a gun that they had agreed they would buy. They didn't go in thinking they were buying a loaf of bread or something like that. They knew what they were buying because this plan had been formulated, as told by every single one of them.

McCarthy, O'Brien, Dennehy had formulated this plan to purchase weapons.

I submit, your Honor, I can send somebody on my behalf, as I'm sure the gun clubs do. The secretary goes down and buys the guns for everybody else.

THE COURT: But he buys them, doesn't he? Takes them out, he tests them, puts them under his arm and takes them home. He doesn't go in and sign a blank line

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in a book.

MR. DURKAN: Yes, your Honor. The fact is he acquires possession and he complies with the government requirement and the law in signing the book as identity.

I would submit to your Honor that Mr. Grady could have gone in and signed his name 12 times or 10 times, whatever it was, after having formulated a plan with McCarthy. Would he then be guilty of falsifying the records? Mr. Carey would be screaming he was signing for Mr. McCarthy. When McCarthy goes in he is signing for Grady. They can't have it both ways.

THE COURT: They are not charging Mr. Grady on the two guns he bought. Isn't that so?

MR. DURKAN: As part of the conspiracy.

THE COURT: Not on the two guns he himself bought.

MR. DURKAN: I believe they are. One of them just came back from Northern Ireland.

THE COURT: That's in the expert count, Mr. Durkan. We are talking about the first set of counts.

MR. CAREY: Your Honor is correct, that the government did not charge either Mr. Grady or Mr. Jankowski with falsification of the records respecting the weapons he signed for or they signed for.

MR. DURKAN: I don't know how much more you want

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to hear on it. I submit McCarthy bought guns he intended to buy, the same for Dennehy, Casey and the rest of them.

THE COURT: I think it is an issue of fact. You see, you could be right and the jury may decide that that is what happened.

MR. DURKAN: If your Honor pleases, if I could put it to you this way: Supposing for the sake of argument there was no Northern Ireland issue. Let's suppose they were members of the Chippawa Gun Club, and the Chippawa Gun Club or sporting club decided some day isn't it time we had some guns? Well, let's go buy guns for the club, fellows, and here is the money. Now, the secretary goes up and says, Mr. Jankowski, here's a hundred dollars deposit. I want you to order 20 guns, and so forth.

Jankowski says, as the evidence clearly indicates here, that if I am going to sell guns to you people I want signatures. I want identities and I want true identities. I don't want any fakery. That's what Jankowski said. That's what the agents said he said. That's what the posture of the case now discloses.

Continuing for the moment with my presentation of this case. So the day comes the guns are in and the president of the club, Frank Grady, said that the guns are in, fellows. Let's go up and sign for them, because we want to

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show that the guns are ours. Let's assume that was the situation. Would the government be prosecuting them? They would not. They would be laughed out of court. What is making this a case, thin as it is, and I say it is even non existent, is the Northern Ireland issue. They have tortured, twisted an indictment out of the grand jury to charge these men with doctoring Jankowski's records.

I submit, your Honor, there is absolutely nothing in this record that shows that the records were doctored, and that is what the charge is.

Should I go on to the export count, your Honor.

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THE COURT: I think perhaps you might. You might first want to take up the substantive counts, two through eighteen. I asked Mr. Carey a minute ago, and he didn't have it available to him, but perhaps you do.

MR. CAREY: I do now, your Honor.

THE COURT: Which are the counts for which the rifles are in court?

MR. CAREY: Count No. 7, Government Exhibit 16; Count No. 18, Government Exhibit 15; Count No. 10, which has been dismissed, Government Exhibit 14. Next, Government Exhibit 17. That is also in the export count.

In addition I will read the export --

THE COURT: Won't you tell me first about two through 18.

MR. CAREY: I have finished, your Honor. There are four in 2 through 18 represented by weapons in court.

Count 19, the bottom serial number is Government Exhibit 13 the second from the bottom is Government Exhibit 17; the fifth from the bottom is Government Exhibit 14; the sixth from the bottom, Government Exhibit 15.

THE COURT: All right, sir.

You may continue, Mr. Durkan.

MR. DURKAN: When you asked me to proceed --

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THE COURT: I am hearing your motion now as to the balance of the indictment.

MR. DURKAN: That would be Count 19, which is the export count. Inasmuch as your Honor asked which guns are which, is it appropriate now to move for acquittal on those counts?

THE COURT: Yesterday counts 9 through 14 inclusive, and Count 18, the Government did not oppose and I acquitted your clients. As to those counts only.

Now, I am about to try to associate the count numbers with the purchasers here. I had satisfied myself before that those purchased by Mr. Grady and the one purchased by Mr. Jankowski are not in Counts 2 through 18. Isn't that so?

MR. DURKAN: That is correct, your Honor.

THE COURT: I think we are clear on that. You can go on and talk about the export count.

MR. DURKAN: YOur Honor, the export. The evidence adduced so far in terms of the export of these weapons, which are listed here, consists of the following: Again, the plan, of course, to buy, the signing for the purchase. The transfer of the weapons from Mr. Jankowski's store. This is now by the testimony of Mr. Casey. In the teeth and in the face of prior lies and perjurious

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statements. On the morning he testified here he comes in telling the story about going on the night in question to receive the guns in cartons and transfers them, I believe, to his car and Grady's car. This is about two weeks after the signing. Driving to someplace around Getty Square and transferring them to the automobile of another person.

THE COURT: Wasn't it Tibbets Park they took them to, or near that place?

MR. DURKAN: I believe so.

THE COURT: Wasn't this at night, they went into Jankowski's at ten o'clock, after it closed?

MR. DURKAN: Yes.

THE COURT: I have to believe him for purposes of this motion.

MR. DURKAN: They transferred them to the trunk, I believe of Lyons' car at that point.

Now, from that point on, which is about two weeks after May 4th, somewhere around the middle of May, the end of May; from that point on there is no testimony on these guns until they came into court here with the inspector from the Royal Ulster Constabelary two days ago.

I submit, your Honor, to charge this man with export, and I would agree, I would agree that there was

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certainly evidence of intent to export, but there is a long, long distance between intending to do something and finalizing it.

THE COURT: He is talking about aiding and abetting. I assume that is what he is talking about.

MR. DURKAN: That's what he stated in his opening, aiding and abetting. Taking the guns and transferring them two weeks after May 4th in the trunk of somebody's car, they still being in Yonkers. We have no evidence as to where they went from there, except that they showed up in Northern Ireland, I believe the first one as showing up in March of 1971.

Now, there is no link between that night on leaving Jankowski's store and the seizure of the guns in Northern Ireland, as testified to by the police officer.

We have testimony, your Honor, by Mr. Casey, and, of course, you and I may disagree as to the authenticity of it --

THE COURT: I don't necessarily disagree. All I say, it is a jury question, whether he is telling the truth or not. That is always for the jury.

MR. DURKAN: But the fact is, your Honor, that legally there is no link here. Casey says a year later I went into a basement and I saw them putting guns in a

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box or a trunk, or both for that matter, and he identifies them as old guns, World War II vintage, something like that, not new guns, which are indeed the subject matter of this case here.

Now, there is absolutely no link between that particular act on the night that he went to Jankowski's store and the finding of the guns in Northern Ireland. There is a statement that Grady is supposed to have made in a bar to Casey, saying, looking at the Daily News, "There is one of our guns." I submit that is incredible in terms of proving anything. I submit to the Court that the Government must, before they can brand him as a criminal, they have to come in and show us something more than the fact he has the guns on one day and a year or two or three or four years later they show up someplace else. There is absolutely no linkage showing export, either directly or aiding and abetting in export. I submit the Government has failed to meet its burden of proving a prima facie case for this Court.

THE COURT: Mr. Bruce, is there anything you wish to add?

MR. BRUCE: If your Honor pleases, I would adopt the position of counsel for Grady in every respect as stated to this Court. However, I would point out

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to the Court in support of the motion in addition that Paragraph 4 of the indictment that is before this Court, there is a complete failure of any proof by the Government to show that Mr. Jankowski had anything to do whatsoever with that which is alleged as a transfer slip.

The Court has taken the position that a conspiracy as enumerated in Count 2, that is, the falsification of records, is more or less buttressed by Paragraph 4. If the Court takes the position that Paragraph 4 validates Paragraph 2, then the Court is reminded in fact that there was absolutely no evidence to support that Mr. Jankowski had anything to do with the transfer slips.

The testimony as remembered by counsel was that these slips were executed outside the store.

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THE COURT: Well, you aren't mislead by that, I trust. That is Pinkerton. If this is done in furtherance of the conspiracy of which your client is a party, it's just the same as if he did it himself. They don't contend, as I understand it, that Mr. Jankowski had anything directly to do with these transfer slips.

MR. CAREY: That is correct, your Honor.

THE COURT: If he is a member of the conspiracy and if the slips were executed or issued to deceased persons in furtherance of the conspiracy, that is an act, even though Mr. Grady or Mr. Casey or somebody else did it.

MR. BRUCE: Very true, your Honor. But your Honor does lose sight of the fact that there was no falsification of these records that were kept by Mr.Jankowski. These records were assiduously kept so that the proper party to whom these rifles could be charged could be properly identified by the ledger that he kept and voluntarily gave to the agent.

There was absolutely no intent here or act to constitute any falsification of the record. Whatever may have gone on outside of the presence of Mr. Jankowski as to whatever scheme or plan or arrangement of purchase, that certainly cannot be charged to Mr. Jankowski. Mr. Jankowski did not falsify any records; he made a very clear point

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as was stated by testimony which is on rebutted, that he must have the exact name, social security number, address, and so forth, of the party who would be charged with this particular firearm.

There was also testimony given by Agent Quinn that his investigation and his perusal of this firearm book which was kept by Mr. Jankowski, that there was no falsification of the serial numbers of those guns.

I think there was one exception and he did qualify it by saying it could have been a clerical error and scrivener's error. I would submit that in addition that that would be my position to support the dismissal of the indictment against Jankowski, and I state for the record again that I do adopt the motion of my brother representing Grady in its entirety.

THE COURT: Mr. Carey.

MR. CAREY: Does your Honor want me to respond on the motion for judgment of acquittal with respect to count one?

THE COURT: Well --

MR. CAREY: Your Honor, I can in summation give, in varying summary fashion give the government's theory which supports a finding --

THE COURT: I think you should for another reason,

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you see, because defendants' counsel are entitled to hear it as well as the court. But you give it very briefly.

MR. CAREY: Yes, your Honor.

THE COURT: While you are at it, address yourself to the question whether the court shouldn't strike out of count 19 every serial number except the four that are here present in court.

MR. CAREY: I will address myself first to that, your Honor.

THE COURT: No, Mr. Durkan has wanted to go at that issue several times and every time he's wanted to I told him it wasn't timely. That doesn't preclude him.

MR. CAREY: The reason is because the government has put official records in evidence and I refer to Government's Exhibits 7 and 8 which show --

THE COURT: Perhaps you should hand those to the clerk now.

MR. CAREY: Certainly. Show on their face that those weapons identified in count 19 was seized in Northern Ireland.

THE COURT: Off the record.

(Discussion off the record.)

THE COURT: Let's be on the record.

MR. CAREY: They are self-authenticating, your

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Honor. Mr. Anderson merely identified the fact that those are documents which came into his possession during the course of his official duties. But he did not -- he was not qualified by the government as the custodian of those documents. They are being introduced as official records pursuant to Rule 44 of the Rules of Civil Procedure and Rule 27 of the Rules of Criminal Procedure, as well as the new federal rules of evidence.

THE COURT: I have some misgivings about these two exhibits. You may state briefly your position as to count -- as to the first group of counts other than 19.

MR. CAREY: Your Honor, the govermment has proven that Mr.Grady approached a number people and asked them to do him the favor of signing their name in a firearms registration book at Mr. Jankowski's place of residence. The government also proved that these individuals were assured they would not have to pay for the gun, they would not receive the gun, and that afterwards they would be given a receipt to show, or a transfer document to show that they had transferred the weapon to another individual.

Proof of the government has shown that these individuals agreed to do the favor they were asked to do and went to Mr.Jankowski's place of business, where they did nothing more than sign the book where Mr. Jankowski

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indicated they should sign it.

Mr. Jankowski, there is no evidence that Mr. Jankowski ever asked any of them to pay for a weapon at any time or to pick up a weapon at any time. There is not even any evidence that Mr. Jankowski questioned their presence in his store or the acts for which they committed while they were in his store.

That clearly shows that there was an agreement, since Mr. Grady was present and virtually all of those occasions -- I believe in fact the evidence shows he was present at all of those occasions, with the exception of Mr. O'Brien's going down there with Mr. McCarthy.

Clearly shows that there was an agreement between Mr. Jankowski and Mr. Grady to falsify the records. The records in question are a federal firearms record which are according to the law intended to enable the government among other things to determine who the person is who actually was sold or to whom the weapon, the respective firearm was delivered.

THE COURT: Transferee, I think is the expression in the rule.

MR. CAREY: Your Honor, I refer to rule -- excuse me, Section 922(b)(5) of Title 18 United States Code where it says: "It shall be unlawful for any licensed dealer

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to sell or deliver any firearm or ammunition to any person unless the licensee notes in his records required to be kept pursuant to section 923 of the Gun Control Act of 1968 the name, age and place of residence of such person."

That is in supplemental request number one of the government, your Honor.

THE COURT: Can we go back to these exhibits 7 and 8?

MR. CAREY: Certainly, your Honor.

THE COURT: Before we recessed yesterday I directed your attention to Rule 803(8)(b) of the Federal Rules of Evidence, and since that time I have taken an opportunity to look at the reports of the notes of the advisory committee on this. I have serious doubts whether these two exhibits would be admissible under the rule.

It is passed later in time then Rule 27 of the Federal Rules of Criminal Procedure.

MR. CAREY: Your Honor, with respect to that question I refer you to Rule 902 of the Federal Rules of Evidence, which concerns itself with self-authentication, specifically to subdivision three which deal with foreign public documents.

THE COURT: Anyone else have any comments on this issue?

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MR. DURKAN: Your Honor, on that I don't doubt at all that those exhibits are authentic in terms of the fact that they bear the signature of Mr. Flannigan of the R.U.C. or whoever signed it. The point here is that they are in evidence as probative of something which is the grossest kind of hearsay.

That officer or somebody found the gun some place at some time, it contains all kinds of testimony with respect to the location of it, the condition it was in, and so forth, and so on. I submit to your Honor that that is a matter for proof. This is not the best evidence because of the information that is contained therein.

THE COURT: At the time they were offered I addressed myself to that particular matter and I said they were received only for the purpose of showing the serial number of the gun and the presence on the date of that incident in the country where that instrument originated.

MR. DURKAN: I understood your Honor to mean the guns that we have here.

THE COURT: Well, I really didn't. I meant any guns that were listed in exhibits 7 and 8.

MR. DURKAN: I submit that any reference to any guns other than the ones we have here, it then becomes hearsay.

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THE COURT: It may be hearsay. The question is whether it's admissible hearsay or not.

MR. DURKAN: I submit, your Honor, that it isn't in this instance. If these guns are in Northern Ireland, other than the five that we have here, that we have to have somebody like Mr. Anderson --

THE COURT: We are talking about count 19. There are four rifles that we have here, and I believe the court should strike out from count 19 the serial numbers of anything except the four rifles.

MR. DURKAN: I agree.

MR. CAREY: Your Honor, there is absolutely no foundation for that. The documents have already been received in evidence. Never mind the fact that we are now rehashing something that has already been accomplished. The documents are self-authenticating documents; they are an exception to the hearsay rule as an official public record.

The matters stated therein therefore may be accepted for the truth of those matters and the government has limited this offer to the fact that these particular weapons were seized in Northern Ireland at a date after the time when they were entered in Mr. Jankowski's record book.

3-2 THE COURT: What about Rule 803(8)(b) which is -- you are putting us really in a situation where it would seem

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we can take police records of Northern Ireland in evidence but we can't police records of the City of Yonkers in evidence in the same courthouse.

MR. DURKAN: I would answer that,your Honor, if the government is really serious about that position, what was the point of bringing over Mr. Anderson and the five guns? It was only a waste of time and money.

THE COURT: Well,I don't place any reliance upon that.

MR. DURKAN: I submit, your Honor, that to let these things in as probative of the fact that the guns were found over there is -- this is not the way to do it. It's not the best evidence.

THE COURT: I think there would be no problem but for the language found in Rule 803(8)(b).

MR. DURKAN: I would certainly of course, your Honor, rely on that. I think it is clear.

THE COURT: There is no judicial contruction yet of that rule. This is an added starter that somebody in the House of Representatives added to the rules when they were enacted.

MR. CAREY: The question is, your Honor, is that you believe the construction of this law was intended to refer to merely a record kept by the police -- the law says

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here, is a matter observed by police --

THE COURT: Somebody observed the serial number on the gun and wrote it down.

MR. CAREY: That is true, your Honor. But there is no question that that is a reliable observation. It's not the kind of observation where one says and writes down in a report, "I saw a man in a blue coat with red hair about the height of Mr. Grady deliver a box of weapons to a ship."

That is an entirely different kind of observation, which is what is clearly intended as the point of this exception in Rule 8. Not the kind of record which is kept which is trustworthy of its very nature.

In fact, the weapons in court correspond, if the court has any question about their trustworthiness --

THE COURT: I have no question at all about the trustworthiness. I have on the admissibility.

MR. DURKAN: I see your Honor is ahead of me. Insofar as the section in which your Honor has quoted, I think the court's point is very well taken. If it is not good enough for the City of Yonkers, it certainly shouldn't be good enough for a foreign agency to come in.

Why should they have a better deal than our own police departments in this country? And I submit to let that in is absolutely improper, and I press the rejection of

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any evidence [illegible]caining to any of the guns except the four exhibits, 13, 14, 15 and 17 insofar as count 19 is concerned.

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MR. CAREY: Your Honor, recording of a serial number is clearly not an observation.

THE COURT: It is not? How do you record a serial number? Don't you take the serial number and look at it and copy the number off it?

MR. CAREY: That is true, your Honor. Then that would be true of any document which recorded anything. A death certificate, a certificate of a license -- these are all observations. Somebody has to observe something to write it down.

The observation is clearly one like you find in a medical report where a doctor says -- a self-serving document.

THE COURT: Substantively it makes no difference whether there are four guns in this exhibit or ten.

MR. CAREY: It does, your Honor, because the particular weapons that your Honor seeks to exclude happen to corroborate the testimony of Mr. O'Brien about Mr. McCarthy, of Mr. Dennehy, the three. It is very material to the Government's case. It corroborates those witnesses. When they said that Mr. Grady told them he wanted these weapons for the old country, they were going to Ireland, he wasn't kidding around.

These people understood that is where they were

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went. If your Honor excludes that, then the Government is denied that very, very probative, corroborative evidence.

MR. DURKAN: I don't want to be redundant on the matter, but the evidence in the case already with respect to O'Brien, and that is what corroboration is needed. There is not even a dispute on it. He signed the book and the number is there. But to let that particular exhibit into evidence, your Honor, is clearly forbidden, and of course I have already elaborated on the type of mischief that that can do if the jury gets ahold of it.

MR. CAREY: Once again, your Honor, I have to address myself to the fact that the Court is making the defense's arguments, it seems to me. There was no objection of this nature whatsoever voiced --

MR. DURKAN: Yes, there were. On the contrary, sir --

MR. CAREY: Somebody will have to point me to the record.

THE COURT: He wanted to give me a long record at the side bar, when I say he, Mr. Durkan, to the effect that the bureaucrats of Northern Ireland, aren't efficient in their record keeping as those in New York.

MR. CAREY: If he has proof of it, your Honor,

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that is proper for rebuttal or defense case.

THE COURT: I decline to take it.

MR. CAREY: Then I ask for a continuance in order to brief this point. I was told by an individual who was responsible for preparing these records in our particular Court that they have been admitted in evidence in Federal cases --

THE COURT: Since these rules?

MR. CAREY: I don't know, your Honor. I don't think that that matters. I think Rules 44 and 27 which have not been revoked and are still in equal force and effect as when they were first passed clearly give the Court precedence for allowing these documents in evidence.

MR. DURKAN: If your Honor please --

MR. CAREY: Rule 8 -- excuse me, Subdivision 8 of Rule 803 it seems to me cannot be addressed to any -- in the way your Honor is considering it because otherwise any official record has to based on an observation of something. And therefore every official record would be excluded if it is given the ruling that your Honor gives it.

It seems to me what they are trying to protect against here is a police officer of a foreign country or distant city riding into a report which appears to

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be an official document and which is kept regularly and it is the regular course of business to keep, and the entries were made at or about the time of the transaction they record, what he observed about suspected or perhaps proven criminal activity, and use that rather than the witness himself to prove it.

However, where it is simply a matter of recording a serial number or a license number or stating -- which is not in itself a criminal act, it doesn't prove anything of a criminal nature -- it seems to me that it is clearly admissible. Otherwise no public record --

THE COURT: Gentlemen, we should eventually come to the point of being practical here. Mr. Carey doesn't think the Court of Appeals has enough work and he wants to offer the defendants a free pass and he wants the Court to help him do it. And you know, the temptation is tremendous. But I have to think, Mr. Carey, I have to read 803, 8B literally.

I am aware of the possibility that you may have in your office an unreported decision by some Judge of this Court or some kind of learning which will say 803, 8B is not to be applied to foreign police officers or law enforcement personnel and only to American officials. That is possible. And I continue to be willing to give

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you some time to look into it.

But in the absence of some kind of authority I think I would have to exclude those rifles from Count 19 which aren't present here in Court and authenticated by Mr. Anderson.

MR. CAREY: How much time will your Honor give the Government?

THE COURT: Well, you see, sooner or later we are going to come to a point of summation here, aren't we? Certainly before anyone sums up he ought to know how many rifles there are in this count. If our jury is here, I would reserve on it and I will start taking the defendants' case.

MR. CAREY: Your Honor, I have just read the House Judiciary Committee Report notes on Rule 803(8). That seems to support the position I took in my argument:

"The Committee intends that the phrase factual findings be strictly construed and that evaluations or opinions contained in public reports shall not be admissible under this Rule."

They are clearly talking about evaluations and opinions.

THE COURT: They are talking about the whole rule there, aren't they? They are not just talking

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about Subdivision (b).

MR. CAREY: They are talking about 803 Subdivision 8, which is what we are talking about here:

"The Committee intends that the phrase 'factual findings' be strictly construed and that evaluations or opinions contained in public reports shall not be admissible under this rule."

This rule is clearly addressed to omitting from public records which would otherwise be admissible evaluations or opinions. The fact that a man records a number recorded on a rifle which is seized is not an evaluation or opinion.

THE COURT: I am willing to leave that issue in abeyance for the timebeing. In all other respects, I think that if the testimony of all the witnesses is believed and all issues of credibility are resolved favorably to the Government, that there is sufficient to go to the jury, and I will deny the motions to acquit as to those counts which have not already been dismissed by me or acquitted, which I mentioned last night.

MR. DURKAN: Do I understand then your Honor is admitting those into evidence?

THE COURT: I am reserving on the question of whether they should be stricken out, to give him a chance

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to look in the books. I will not reserve so long about it that it will result in impairing anybody's ability to make a defense.

I think at the present posture of this case there is no difference between the 4 or 10. When it comes to summation, of course, there may be a difference. But as far as going forward with your witnesses, I don't think it makes any difference how many rifles are in Count 19.

MR. DURKAN: If on the resubmission of the issues, I'd like to be heard further on it inasmuch as your Honor is reserving now.

THE COURT: All right. The same privilege is open to you if you can find any authority. Sometimes there are unreported authorities in this area. If Mr. Carey has them, I will take them.

MR. CAREY: Your Honor, perhaps a request could be made of the defense to find authority which is contrary to the advisory committee's notes. Insofar as I have been able to read it, notations, the explanation in the Advisory Committee note as to exception 8 where they make reference to Treasury records, general land office records, all of which -- pension office records -- have to be based on an observation of something. Then

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[In open court: Jury not present:]

THE COURT: Can we have the Clerk bring in the jury?

MR. HOLMAN: If your Honor pleases, the Government having rested, motions under Rule 29 having been made by the defense and the Court having ruled, the defendant Grady, in proceeding with his defense, has a legal defense that he wishes to plead in the case. I think that is properly done without the jury being present, your Honor.

THE COURT: You may be heard.

MR. HOLMAN: Thank you, your Honor. The defendant Grady relies upon Section 3282 of Title 18, United States Code, that the indictment numbered 0227, which is the indictment now before this Court and upon which the Government has offered its proof, that that indictment, your Honor, filed in this Court on March 8th, 1976 is time barred.

I call your attention, your Honor, to the language of Section 3282 which provides the applicable statute of limitations.

THE COURT: What was the name of the Eastern District case that we had? We discussed this before, you and I. What was the name of that case?

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MR. HOLMAN: The name of that case, your Honor, is United States v. Moskowitz. We haven't discussed this before, your Honor. I have never presented this point to the Court before.

THE COURT: I thought you had. Go ahead and tell me now. You are talking about the fact there is a superseding indictment?

MR. HOLMAN: The indictment before this Court, I am simply saying, was filed on March 8, 1976. The Government is not going to say any differently. I respectfully submit, your Honor, that the last proven date in this case is July 24, 1970, more than five years, your Honor, having passed from that date to the filing of the indictment in this case.

THE COURT: Of the superseding indictment.

MR. HOLMAN: Of the superseding indictment, of course. The first indictment, which is no longer in this case, your Honor --

THE COURT: In May 1975 was timely.

MR. HOLMAN: In May 1975 the Government filed an indictment. They superseded that indictment. They filed another one.

I wait for the Government's position, your Honor, with respect to that before making any further

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statements on the law, because the statute is rather clear. That statute says it is five years to bring the indictment, your Honor, and it wasn't done in this case.

THE COURT: All right, Mr. Carey.

MR. CAREY: Yes, your Honor. The action, as Mr. Holman concedes, was instituted within the statutory limitation of five years, if that is the correct limitation. The superseding indictment had no effect to discontinue that prosecution which had been instituted, but in fact continued. In fact, the superseding indictment is something which came about not because the Government wanted to add any charges, but in fact to comply with the Court order, which was the result of a defense motion, as well as to comply in other respects with motions made by the defendant which the Court had not at that time had an opportunity to act upon.

It is the Government's position that in this case the prosecutinn the superseding indictment is identical to the prosecution on the superseded indictment and, therefore, the technical distinction and benefit the defendant would like to derive as a result of the superseding indictment does not, nevertheless, entitle him to a dismissal of the charges against him, since they were and their roots derive from an action instituted

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within the statute of limitations.

MR. HOLMAN: Your Honor, the Government has brought this point within the four corners of the Moskowitz case. Yes, your Honor, the remedy at this juncture for the defendant, after he has pleaded a statute of limitations defense is a judgment of acquittal on all counts, your Honor. The Government has not stated any reason in law or any factual reason, your Honor, for its position. They wanted to comply with a Court order. What Court order? What they wanted to do, your Honor --

THE COURT: They wanted to correct an error in the prior indictment.

MR. HOLMAN: That is what they wanted to do. They wanted to correct an error in one count, Count 29. That was the only error in the indictment from the Court's point of view.

THE COURT: I don't know that that is so. They had some other paragraphs in there that probably didn't really belong there. They sort of had a hybrid offense on the first count.

MR. HOLMAN: The Government has no right to merely correct at its whim anything that might occur to them as being defective. They bring an indictment, narrowly within the statute of limitations as it was on

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May 2nd, 1975. If they hesitated there, your Honor, they wouldn't have had their indictment timely filed. They waited almost nine or ten months, your Honor, before they got around to making these corrections.

Your Honor would agree with counsel, I think, that with respect to the first 28 counts in the indictment, that we are talking not about matters of substance. Your Honor disagreed with counsel for Grady at an earlier time when I attempted to make that point. Your Honor said no, that these are not matters of substance.

With respect to Count 29, that is a different matter. What the Government should have done would have been to have dismissed Count 29 and made a motion to consolidate with a new indictment. Because if your Honor recalls, the Government's offer of proof in Count 29 would have, I believe, brought that at a later period. It was conduct occurring at a later period.

THE COURT: Count 29, as I recall it, is the same crime charged as Count 20 in this indictment, which the Court has already dismissed with prejudice.

MR. HOLMAN: I am simply suggesting, if I may play the role of prosecutor at the moment --

THE COURT: Don't play it because I don't concede that the Moskowitz case states the law correctly.

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I think if it does you are probably right. You can read this statute literally, Section 3288, which says in the second paragraph of the sentence, "Or an indictment," and I am leaving out words having nothing to do with this particular issue, "is found otherwise defective or insufficient for any cause, after the period prescribed by the applicable statute of limitations has expired."

MR. HOLMAN: You must focus on the word "dismissed." Whenever an indictment is dismissed. You must read the statute very strictly. These statutes are statutes of repose.

THE COURT: I don't agree. I think the situation in this Circuit is if they find an indictment is improperly drawn they have an affirmative duty to file a superseding indictment because there is no power on the part of the Court to amend an indictment. There is always the possibility that the jury would send for the indictment and want to read it for themselves in the jury room.

MR. HOLMAN: I'm not contending that if the Government had done this within the statute there would be any problem.

4A.2 THE COURT: I don't agree with the Moskowitz case.

MR. HOLMAN: May I hand the defense's memorandum

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of law with respect to this up to the Court?

THE COURT: Yes. Our jury is waiting and I want to proceed. I would like to have an opportunity to read your memorandum. I thought I had been into all this before last week. I don't agree with Judge Neaher. I don't think it is necessary to dismiss the first indictment before you can file a superseding indictment. I would say that has not been the custom and practice in this Circuit. There are more superseding indictments floating around in this building than anyone would believe.

MR. HOLMAN: Can your Honor point counsel to any case cited by the Second Circuit that supports your Honor's contention?

THE COURT: I will give you the same invitation.

MR. HOLMAN: Well, if your Honor please, Judge Neaher --

THE COURT: Judge Neaher's commission has the same dimensions as mine, assigned on or about the same date.

I read the statute literally, but I will read your memorandum. If you have a Second Circuit case or even a case in another Circuit that says I have to grant your motion, you may renew it later on.

MR. HOLMAN: There is no case anywhere on

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this question which is contrary.

THE COURT: Except Moskowitz.

MR. HOLMAN: Which is contrary. In this Circuit, there is no case by the Second Circuit which suggests I am in error by raising this point. I think, your Honor, it is crystal clear. I think if ever there was a concern, your Honor, here it is.

THE COURT: I will read your memorandum and take a look at these other cases mentioned here.

MR. CAREY: Your Honor, on the point which was raised before the recess, are we first going to bring the jury in and hear the defense?

THE COURT: I understand the defendants are going forward with evidence. I want to take that evidence and send the jury to lunch. I am still studying this evidentiary point and I have invited you to do likewise.

MR. CAREY: I am doing so, your Honor.

THE COURT: Bring the jury in.

MR. BRUCE: For the purposes of the motion that were made by my co-counsel, your Honor, I also join in the motion.

THE COURT: Certainly. The record will show that you join in it.

MR. HOLMAN: One further point, your Honor.

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If your Honor's position is correct with respect to the question that superseding indictments are filed in this District all the time, why then, your Honor, is there a need for Section 3288 of Title 18?

THE COURT: I read 3288 in the disjunctive, as literally permitting what was done in this case. It would not be permitted to file a superseding indictment which charged a different crime. But if you compare the two indictments side by side, what he done, in effect, is to dilute the strength of the charges made. I found nothing in comparing the two indictments, as we did last week, to the contrary.

MR. HOLMAN: I have nothing further to say at this time, your Honor.

[Jury present.]

THE COURT: Good morning, members of the jury.

Mr. Bruce, are you ready to proceed at this time?

MR. BRUCE: I am, your Honor. If it pleases the Court, at this time the defense, on behalf of John Jankowski, calls John Jankowski to the stand.

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is requesting summations now?

THE COURT: No. I let the jury go for the day. I am just trying to get my scheduling down.

MR. BRUCE: I am sorry, your Honor. One half hour.

MR. DURKAN: I would estimate a half an hour, maybe 40 minutes; notmore.

THE COURT: All right. I did take the opportunity during lunch to review some of the congretional records on these rules, the so-called Dennis Amendment and I have reached the conclusion that notwithstanding what appears to be the literal word of that rule, that if it is read in accordance with the congretional history it doesn't intend to abrogate Rule 27 of the criminal rules, and that I will deny the motion to strike these two exhibits.

I also reiterate, however, that these exhibits are not to be taken into the jury room, so that any of the extraneous material in them can be used by anybody.

The only thing they could be used for is the date, place and serial number of the weapon. None of the other material on the page will be deemed to be before the jury. So I'd like the record to be clear on that.

MR. CAREY: Your Honor, it was date, serial number, and --

THE COURT: And the name of the city, that's all.

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None of the other material.

MR. CAREY: The government doesn't offer it for anything else.

MR. DURKAN: When you say the date, your Honor, you mean the date it was found?

THE COURT: Yes. To the extent that the date is after May '70. That is the relevant issue. If you want to take a particular page --

MR. DURKAN: Maybe we could reduce that at the time,your Honor. I'm excepting to your Honor's ruling but maybe we could reduce it because it's so simple, reduce it so that we all understand it, your Honor could read off the dates. They are all in the little clips on the side, the addenda.

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THE COURT: I wouldn't intend to read it off unless the jury made some request for it. If the jury asked to see the exhibit I would tell them that the only part of these books that were in evidence is the following data, which I will now read to you. I just happened to open the book to Mr. William Dennehy's matter. That shows that on February 21, 1972 that the M-1 carbine 171189 was found in Belfast, and that particular entry of course has nothing controversial in it. But in some of these others there are other types of weapons and other data and other information which properly ought not to be before this jury.

MR. CAREY: Your Honor, of course the Government doesn't intend to bring anything else but those matters which you have just outlined to the jury's attention. I have no objection to it going in, but I can't imagine that Mr. Durkan or Mr. Bruce would bring it to their attention.

MR. DURKAN: You are correct, Mr. Carey.

THE COURT: You know, I have a duty independent of their obligations. I have been charged with making their arguments, and would say I am a little tired of hearing it.

MR. CAREY: I wasn't saying that, your Honor,

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this time.

THE COURT: The client was asked what he told his attorney and I interrupted and told him he didn't have to answer that.

MR. CAREY: I have no objection to that.

THE COURT: All right. Is there anything further we should take up at this time before we have our charge conference?

MR. HOLMAN: I'd be interested if your Honor would hear me a little further on my 3282 argument. I am troubled with your Honor's construction of 3288, I may be wrong, your Honor, you may be reading the section somewhat differently than it reads.

THE COURT: 3288 was the section that I was speaking about before.

MR. HOLMAN: There are two sections which you have to read, your Honor. You have to look at that and also 3289. Let me look at 3288 with you, your Honor.

The only conceivable section of that or part of that section which would support any theory that what the Government is correct is where the defendant has waived in open court prosecution by indictment.

THE COURT: I don't so read it, Mr. Holman. Let me parse the sentence with you.

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The first part relating to a dismissed indictment is not applicable in this case because nothing was dismissed. So the first words which say,whenever an indictment is dismissed for any irregularity, defect or irregularity with respect to the Grand Jury, those words of the statute are not relevant to our particular issue.

MR. HOLMAN: Agreed.

THE COURT: Then I continue. Then it says on indictment or information filed after the defendant waived in open court prosecution by indictment, there the officers are lumping together two separate elements. An indictment or an information filed after the defendant waives in open court prosecution by indictment. That gives us two subjects there in that clause. Then the operative words applying to each of those, applying to indictments as do other information filed in lieu of indictment are "found otherwise defective or insufficient for any cause."

The Court regards this as being an indictment which was otherwise found defective or insufficient not by the Court, the Court made no ruling that there was anything wrong with the prior indictment. It was so found by the United States Attorney who presented the matter to another Grand Jury, apparently, and asked for

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a superseding indictment.

I have to tell you that that is a common practice and causes a tremendous burden on the Judges in this building because of the extra record keeping entailed, that it is something they are doing all the time. They are doing it because case law doesn't permit me, as the State law does, to alter or amend or change an indictment by Court order. So that is what they did. And I say that they found, they, being the United States Attorney in this District, found a prior indictment to be otherwise defective or insufficient and then they returned, the Grand Jury returned a new indictment.

I don't think it would have made any difference, assuming it had agreed with you and dismissed the indictment on Friday, if they had brought in a new indictment Monday following a dismissal for an error, defect or irregularity.

MR. HOLMAN: I wouldn't be here today arguing this point if they had done that, Judge. But let me ask you out of my information, because maybe I am not reading it, what do you do with the language where the defendant waives in open court?

THE COURT: The only thing he can waive in open court --

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MR. HOLMAN: Prosecution by indictment, and he didn't do that.

THE COURT: Whenever an information is filed it can only be filed after he waives in open court, so I take that as being disjunctive. I take it that line they are talking about, or indictment or information [after the defendant has waived in open court prosecution after indictment] that is the clause which modifies "information."

Then it then says both with respect to information or indictment is found otherwise defective or insufficient for any cause.

MR. HOLMAN: I am not going to --

THE COURT: That is the basis for my ruling. If I am not making it clear to you, then it's my mistake.

MR. HOLMAN: It is now clear but I think our disagreement is also very great. I am not going to belabor the point.

I would like to add something to the record. YOur Honor seems to think this is done all the time. I have just gotten the message, a couple of former chiefs of the Criminal Bureau of the United States Attorney's Office just had this problem passed by them. Mr. Morvillo and Mr. Maloney, who used to work here, your

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Honor.

THE COURT: That is pretty good authority, Mr. Holman.

MR. HOLMAN: Thank you. And they said on the contrary, your Honor, this problem hasn't happened. They even cited a case to me. United States v. Kahn, 340 Fed. Supp. 485, 472 Fed 2d 272 , that is the Teleprompter case.

THE COURT: He went to jail for five years. What did the Court say in the Kahn case?

MR. HOLMAN: In that case, your Honor, the Government obtained a new indictment after the statute of limitations had expired and before the filing the Government got the defendant to waive the statute of limitations against the filing of a new indictment in open court. The prosecutor in that was Mr. Morvillo.

The commont practice is not, in this United States Attorney's Office, I respectfully submit, to get a superseding indictment after the statute of limitations nas run.

THE COURT: We had one. We had Lum.

MR. HOLMAN: What defenses the defendant may have raised in that case I don't know.

THE COURT: Obviously this is not a very

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helpful discussion of this point although it is always interesting to know what Mr. Morvillo and his colleagues think now that they are outside practicing. I believe that under the circumstances I can read the statute literally. It is a fruitless act for the Court, the U. S. Attorney to be in a position where he comes to court and says, Judge, we just decided this Thursday afternoon that this indictment is defective or insufficient for any cause and we therefore ask you to dismiss it so that we can comply with 3288 and file a new one Monday morning. If that were done that would be surplusage in my view.

MR. HOLMAN: I gave the Government that very opportunity, it may have been foolish, but I asked the Government a half a dozen times, perhaps to the point of distracting the Court, asking them to dismiss. And they refused, your Honor.

THE COURT: Refused what?

MR. HOLMAN: The Government refused to on its own motion dismiss Indictment No. 1 and they refused to file nolle. They refused to take any action at all.

THE COURT: But you are telling me that the motion was lacking merit on Friday, either the Court or

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the U. S. Attorney with the approval of the Court had dismissed the old indictment.

MR. HOLMAN: The proper procedure would have been yes, to have done that, let's say Thursday afternoon.

THE COURT: Would I have had any basis to deny a motion to file a nolle or dismissal motion by the Government on Thursday? Don't you think I would have said, Mr. Carey, you have sat with this indictment since May and I am going to trial and I am doing nothing else but going to trial?

MR. HOLMAN: Your Honor, I am not going to put myself in your role of -- say that is true. Now we are in a position where the Government didn't ask you, they went ahead and did it anyway. It's not any more right.

THE COURT: How are you aggrieved, apart from Count 29 of the old indictment?

MR. HOLMAN: Because the statute has run, your Honor. This defendant is sitting here and the jury is going to come back tomorrow morning.

THE COURT: If he is not acquitted I believe you have made a more than adequate record here. I state again I disagree with the reasoning of the Moskowitz

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case. I believe myself entitled to read Section 3288 literally. I don't believe that the statute requires the prosecutor to perform a useless act of coming in and asking for an indictment to be dismissed for error, defect or irregularity before he may file a superseding indictment. I regard it as nothing more than analogous to an amended complaint in a civil action.

MR. HOLMAN: Particularly where there was no error.

THE COURT: You see, he dropped out some material in some of the counts which remain alive, did he not?

MR. CAREY: To be precise, I dropped a clause which gave both the Court and Mr. Holman some trouble, the one that said it was part of the means of committing the conspiracy to export the firearms. Your Honor thought that that would create some problem since the conspiracy charged only a plan to violate the laws requiring proper registration and proper maintenance of records.

THE COURT: I do not believe that the Court was required to dismiss the first one before the superseding indictment could be tried. Once the U. S. ATtorney recognized that he had an indictment that was insufficient or defective, 3288 in my opinion permitted him to file

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it.

I think it is an interesting point but I am sure your rights are fully protected on it.

MR. HOLMAN: Thank you. I am not going to belabor the record any more.

THE COURT: We will take a very brief recess. Do I have any requests to charge from the defendants?

MR. HOLMAN: Your Honor, we do not have written requests. We have certainly comments on the Government's requests. There may possibly be one request by the defendant in the event that your Honor does not cover it in his customary charge.

THE COURT: What is that? Why don't you tell me right now? You did request at the side bar that I charge that no adverse inference should be drawn from his failure to take the stand.

MR. HOLMAN: Yes, your Honor. I think that was Mr. Bruce's suggestion.

THE COURT: I am sorry. I thought it was you, sir.

MR. BRUCE: That's correct, your Honor.

THE COURT: It doesn't apply to you any more.

MR. HOLMAN: For example, I certainly would not be satisfied with the Government's request to charge

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on accomplice testimony. I am simply asking that you give your customary charge.

THE COURT: Would you want me to charge no inference be drawn from failure to take the stand?

MR. HOLMAN: Yes.

THE COURT: That I will do.

MR. CAREY: I did submit a revised request No. 12 to the Court this morning and I gave copies of it to counsel for the defense. The revision was assisted by my discovery of a large typographical error.

THE COURT: You have to take that up with me inside and make certain that I understand it.

[Recess.]

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[In the robing room:]

THE COURT: The purpose of this conference is to state to you generally the thrust of the charge so that you can prepare your summations. I am not able to engage in a lengthy discussion of precise wording, hackling over minor parts of it.

In addition, I reserve the right to adapt my charge or add to it in the event that anything is raised in summation which requires any comment on my part.

I will go through it in outline form and then I will go to particular items which may be of concern to you. I will begin by emphasizing the jury's duty of impartiality, the fact they must treat the parties equally and that they decide the fact issues and determine the credibility, draw the inferences and resolve conflicts in the evidence. My function is to instruct them as to the law and they are to take my instructions as a whole; that their recollection of any fact matter controls. Anything the lawyers or that I might say is not to be substituted for their own recollection.

I will tell them the attorneys not only have the right but it is their duty to make their objections and press whatever legal theories they may have and they are simply performing their duty; and any evidence as to

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which an objection was sustained or anything stricken out by the Court must be disregarded.

I will emphasize to them I am neutral and have no opinion. They must not assume otherwise, because I do not. I will tell them the indictment is not evidence of the crimes charged, but merely a method of bringing the case into court and it has no evidentiary value,

The burden of proof beyond a reasonable doubt is on the Government. The defendant does not have to prove his innocence. He is presumed innocent, and this presumption is removed only if and when they are satisfied that the Government has sustained its burden of proving the guilt of a defendant beyond a reasonable doubt as to the particular charge then being considered. If they are not so convinced, they must find him not guilty.

Then I will define reasonable doubt, the words which have traditionally been used here which I guess you are all familiar with. I will then explain it to them that they will be asked to state a separate verdict on each count as to each defendant therein named. They may have to consider the nature of the participation, if any, of William Dennehy, JOhn O'Brien and Edward McMorris, and Casey.

Who else was claimed to be an accomplice, a

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co-conspirator who testified here?

MR. CAREY: McMorris, Casey, Dennehy and O'Brien were the only ones.

THE COURT: They must not concern themselves with why these two persons are on trial together and why the others were not indicted. These are not matters of their concern. I will tell them that guilt is personal and whether or not either defendant has been proved guilty beyond a reasonable doubt must be determined separately with respect to him solely on the evidence presented against him, or the lack of evidence, and not on the evidence against somebody else.

MR. CAREY: Will your Honor add a caveat, that except to the extent that evidence, if there is a conspiracy as you will explain subsequently, maybe considered against other members of the conspiracy?

THE COURT: I am explaining the Pinkerton theory later on in connection with the conspiracy.

MR. CAREY: I am thinking that the two may be in conflict in the jury's mind when they hear it one way first and then hear it a second time a second way.

THE COURT: I will see that I avoid any conflict, but I don't think there is any.

Then I will define direct and circumstantial

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evidence and tell them how they determine credibility. Then I will them if they find anybody has testified wilfully falsely as to a material fact, they may, but not need, disregard the entire testimony of the principle that one who testifies falsely about one material fact may testify falsely about everything, but they are not required to. They may accept so much as they deem true and disregard what they believe false. They are the sole judges of the facts.

Then I will inform them that there is no adverse inference from failure to take the stand. The defendant doesn't have to come forward as a witness or bring any witness forward. I will then define expert testimony and explain that to them and tell them they are not bound by it. Then I would inform them about the accomplices. Here again, I understand there were only four alleged accomplices.

MR. CAREY: There are four alleged accomplices who testified.

THE COURT: Yes, who testified. I will tell them there is no requirement that the testimony of an accomplice be corroborated; that sometimes the Government has to use the accomplices because they have to rely on what witnesses there are. I will also tell them that it

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should be considered as bearing on his credibility.. It doesn't follow because he has acknowledge participation in a crime he is not capable of giving a truthful version The testimony, however, should be viewed with great caution and scrutinzed very carefully. That is relatively standard here in the District.

I will tell them they may consider admissions. Then I would go to the indictment and read Count 1 and then explain or read the relevant part of Section 18371. I will explain to them that a conspiracy is a separate offense from the substantive crime the conspiracy was formed to accomplish.

Then I was going to request No. 3 of the Government.

MR. HOLMAN: With respect to REquest No. 3, certainly your Honor is not going to read 923, Title 18. I think it is an error, typographical error in the Government's request.

THE COURT: 922m.

MR. HOLMAN: 923.

MR. CAREY: It is not a typographical error.

MR. HOLMAN: Is it charged in the indictment?

THE COURT: That is my understanding.

MR. BRUCE: I would like charged that any

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fact equally consistent with guilt or innocence must be resolved in favor of the defendant.

THE COURT: I refer you to People v. Warren, a highly respected charge, but does not apply in this Circuit.

MR. BRUCE: I respectfully request your Honor give it.

THE COURT: I decline to give it.

MR. DURKAN: I would like to be associated with that request.

THE COURT: Yes, each may be associated with the other unless you indicate otherwise.

Again at the end of Request No. 3 I will emphasize they must consider each defendant separately.

MR. DURKAN: Will you excuse me for a moment? I want to get my copy of the indictment. You may proceed, though.

THE COURT: We will wait for you.

[Pause.]

THE COURT: I then go to No. 4. I vary the words slightly. I don't usually tell the jury "You must find." I think that has a bad ring to it, but I tell them what the elements are and that the elements must be proved beyond a reasonable doubt.

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I don't see any purpose on Page 2 of Request 4 referring to the bill of particulars. That is not before the jury. There are no co-conspirators alleged in the indictment really. Persons known and unknown. However, they could find either of these defendants guilty on Count 1 and acquit the other because the could find that either or both of them conspired with O'Brien or with someone else.

MR. HOLMAN: Are you going to read the portion of the charge on Page 2 which says, "The adage 'Actions speak louder than words'"?

THE COURT: That is per Judge Weinfeld and that is the common use in this District. That is an approved charge here.

On request No. 5 I am changing it only slightly. Instead of saying, "For the purpose to violate the law," the fourth line from the bottom, I will state, "With a purpose to falsify the records of the J & J Bait Shop."

MR. HOLMAN: I'm sorry, your Honor, what was that?

THE COURT: Request 5, Page 1, fourth line from the bottom.

MR. DURKAN: In other words, you are going to specify with a purpose to falsify the records?

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THE COURT: Yes, falsify the records of the J & J Bait Shop.

On the next page of that there is a typographical error where a line has been repeated. The last paragraph of Page 2 of Request No. 5 I decline to charge.

I will then instruct them that knowledge is a matter of inference from facts proved. The defendant does not have to be fully informed as to all the details of the scope of the conspiracy. He need not know all the activities and acts. However, mere association does not make one a member, nor is knowledge without participation sufficient. What is necessary is that the defendant participate with knowledge, at least some of the purposes of the conspiracy and with the intent to aid in the accomplishment of unlawful ends.

That is relatively standard, No. 6. We stopped 6 of the first full paragraph of Page 2 and then we expand on the question of did he join one or more in the conspiracy with awareness of its basic illegal purpose and aim. If so, he can be treated as a full member of the conspiracy. Once shown to have been informed, it is presumed he continued until its objective was accomplished or an affirmative act of termination by its members or until it is discovered.

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Then I will go into the agency explanation.

MR. CAREY: Is that the statement of liability for acts and declarations of others?

THE COURT: Yes, in furtherance of the conspiracy. I will tell them in determining whether a particular defendant was a member of the conspiracy, if any, the jury must consider only his acts or statements. He cannot be bound by the acts or declarations of other participants until it is first established that the conspiracy which is charged existed and that he was one of its members, which is the way I interpret Geaney.

Then I will go to Request No. 7. I have added into that the words "in the Southern District of New York" relative to the first paragraph. I will take out the clause on Page 2 which begins "Although in this case the Government claims."

I will take Request No. 8. However, I don't know whether that is the correct date. I suppose it is really.

MR. CAREY: May 2nd, 1975 is the date of the superseded indictment. It should be the superseded indictment in the parenthesis.

MR. HOLMAN: With all due respect, I don't see the point to tell the jury it is a superseding

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indictment.

MR. CAREY: That is not a request by the Government that they be told there is a superseding indictment. That is why it is bracketed.

THE COURT: It doesn't really charge that, does it?

MR. CAREY: The indictment charges until the date of the filing of the present indictment which is --

MR. HOLMAN: March 8.

THE COURT: That is plain ludicrous because these people have been out on bail since May of 1975. What do you want to do with this?

MR. HOLMAN: It is what they are charged in the indictment.

MR. CAREY: It does not, it seems to me, your Honor, go against the vote of a Grand Jury to limit the period of time to which the conspiracy extended since the period of time the Government is requesting the Court to charge the jury is within the period the jury found to have been the period in which the conspiracy existed.

THE COURT: I will tell them March 8, 1976, but I think I also will tell them, as I mentioned earlier, the conspiracy is deemed to end when it is

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discovered. Any conspiracy is deemed to end when it is discovered.

MR. CAREY: I have wondered about that myself. I think that is true in the average conspiracy. I don't think that is true in certain limited conspiracies where it is charged as part of the conspiracy they intended to conceal their participation in the conspiracy.

THE COURT: Those have a short life in this Circuit, those conspiracies. They come in securities violations usually and they don't do too well.

MR. HOLMAN: The defendant Grady's position on this charge, your Honor, is that defendant agrees the Court must charge March 8, 1976 because the indictment so reads, without commenting on whether that indictment --

THE COURT: I will not say whether it is superseding or not.

MR. CAREY: I am not asking for that.

MR. HOLMAN: I am suggesting at this point whether that very phrase in the superseding indictment creates some additional problem on the record, your Honor.

THE COURT: You may be deemed to have extended your motion to include directing the Court's attention to the fact that the duration of the conspiracy is stated as

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being longer in the superseding indictment.

MR. HOLMAN: This relates to our motion that was decided by the Court with respect to the statute of limitations.

THE COURT: Now, the counts which are no longer before them are 9, 10, 11, 12, 13, 14 and 18, if I am correct. I will tell them they need not consider them and should not speculate as to why they are no longer before them. Then I will read 922m of Title 18. Then I will read the regulation of what the record will show. Then I will define the firearm statute. That is certainly a terrible statute, isn't it?

MR. CAREY: Does your Honor intend first to recite the elements or will that be later?

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THE COURT: I was coming to that. "Readily be converted to expel a projectile." You know that includes a curtain rod. A curtain rod can readily be converted to expel a projectile.

MR. CAREY: I don't know about readily.

THE COURT: I will then take supplemental request number two somewhat modified. I will certainly leave out anything that is indisputable. I don't think anything is undisputable in a criminal case.

MR. HOLMAN: It is crucial at this point that you give us the charge you were going to read.

THE COURT: I am not required to do that. I will do it as a courtesy to counsel. Don't deem that I have set a precedent. I intend to tell them in substance the act was passed by Congress in order to help the government locate and check upon the transferees of firearms, and here the defendants claim that Exhibit 9 recorded the true name and address of the persons who signed the book, and consequently the government was not deprived of true information.

Is that a fair statement of your contention?

MR. HOLMAN: Yes, your Honor.

MR. BRUCE: Yes, your Honor.

THE COURT: I will tell them the government's position is that the acts of entering true names and addresses

were the means allegedly used to deprive the government of what it contends is the true information; that is, that in fact Defendant Grady and individuals other than the persons listed in the records were the persons to whom Defendant Jankowski sold or delivered the firearms identified in the indictment; that the Defendants Grady and Jankowski engaged in a subterfuge by causing other persons to be listed as the persons to whom the firearms were sold and delivered and that this practice was calculated to impede the government in its rights to control and check on a transfer of firearms.

Now the second page of supplemental request number 2 I do not intend to give. I then was going to go on and tell them further --

MR. HOLMAN: With respect to that second request, Judge --

THE COURT: I am only giving the first page of it as modified.

MR. HOLMAN: I understand. This is not a statement of the law by you, but, on the other hand, a statement of the government's --

THE COURT: A statement of the contentions of both parties, and I intend to state both parties' contentions fairly. I think you already told me I stated your contention in a way that was satisfactory.

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MR. HOLMAN: Yes, your Honor.

THE COURT: They must consider the totality of the circumstances. They can use their common sense and are not required to look at individual instances in isolation. In considering whether it is possible to make a false entry in a federal firearms record by recording the true name, address, social security number and date of birth of a person next to a serial number or a particular M-1 rifle or carbine, they may consider that activity in connection with the contention the papers were then issued to the persons who were listed in the log book which indicated that each person had transferred his firearm to a third party at a date subsequent to purchase and also the statement attributed to a member of the conspiracy to the effect that those persons were deceased or fictitious.

In other words, the entry of true names could be regarded by the jury as falsification, if it was part of a scheme to obfuscate and conceal the chain of possession or the travels from person to person which a particular numbered firearm takes between the time it is manufactured and the time it passes from the wholesaler to the retailer to the purchaser and then to subsequent purchasers until it reaches some point in time or place where the government desires to know who owns it or how it reached some place.

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That is the gist of the whole conspiracy. If it were not for this evidence that these weapons had been transferred to fictitious or deceased persons, this blue Rambler story, I would really feel constrained to dismiss the first count because I would think they had purchased them. I think I will stop my discussion right there because I am talking about a non existent factor.

The thing that makes this a subterfuge and a false record, the only thing in my mind is the fact they were taking it in all these separate names and then passing it over into deceased or non existent persons. I think without that there is no crime on these counts.

Let Mr. Holman answer first.

MR. HOLMAN: The problem with that, your Honor, is that your Honor concedes that without the receipt, without the transfer document it is a problem in terms of an alleged crime.

THE COURT: What I am saying is without the transfer document I think a reasonable juror acting reasonably should acquit. I am not saying it is not something for the jury to decide.

MR. HOLMAN: I would agree with you it wouldn't go to the jury.

Let me suggest, and this goes back to our pretrial

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motion, our contention that this was up to Congress to decide whether these transfer documents were required under the regulations and in the statute. It is not.

THE COURT: I think the regulations and the statute prevent you from using a contrivence or subterfuge whereby you cut off the purpose of the act, which is to permit the Treasury Department to trace the devolution of a weapon, and they said this right in their legislative history, to permit the devolution of this weapon to be traced from the foundry to the scene of the crime, although I wouldn't use any such expression in the courtroom. I think that is the purpose of this legislation.

When a rifle is found somewhere they can find out how it got there, whose hands it passed through, and each person will be held to account and they will say, all right, big Jack O'Brien, you bought this gun in May 1970 and now we find it -- and you can name any place. It doesn't have to be in Northern Ireland. We find it in connection with a crime or riot in the hands of anyone you want to assume, the Klu Klux Klan, or say anything you like, and what did you do with it? Then he has to come forward and say that he sold it to McArdle, who lives at 6 King Avenue in Yonkers.

MR. HOLMAN: Your Honor, the very point here, and I am not going to burden the record with much more on

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this, but it occurs to me in my research that I can find no regulation, I can find no statute, I can find no case which supports the government's theory or which would support the government's theory that the transfer document falsification constitutes any violation of the law. You have a bootstrap problem here.

I would suggest to your Honor that it is curious you are telling us that the falsification of the records as prescribed by the statute does not appear to be material or substantial enough to justify alone that case going to the jury. I am saying that you are bootstrapping by saying that because these transfer documents, where there is no statute or no regulation prohibiting this kind of falsification -- I mean in the ordinary course of events --

THE COURT: If they intended, when they went in and made these entries, not to become the transferees of the weapons but to immediately close off the chain of record for that weapon by turning it over to the fellow on Jerome Avenue, who can't ever be found, and if they went in the store knowing that, intending to sign that way and Grady and Jankowski knew that, too, and they all got together and said this is how we will do it, there you would have a violation of the statute and regulation in making the entry. I think this case has to be narrowed right down to that.

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MR.HOLMAN: I would tend to agree, but that is not our case. The proof does not support that these men went into the store knowing they were going to get a transfer document. That happened later at the Chippawa Club.

THE COURT: If that be so, that makes a very strong argument to the jury.

I will let you speak, Mr. Carey.

MR. CAREY: I won't take long,your Honor.

The only thing I am curious about is that your Honor does not believe, it seems from the way I read your remarks, that if these men went into the store knowing they were never going to be sold anything and that nothing, that is, no firearm was ever going to be delivered to them, nevertheless the records kept by Mr. Jankowski could be considered truthful.

THE COURT: That is not this case, is it?

MR. CAREY: Yes, it is, because these men knew they were not -- they testified they were not going to receive the weapon and they testified they were not going to pay for it. They were told before they went in they would get a transfer document. That's why Mr. McMorris was so nervous because it took a few days before he got it.

THE COURT: The falsification only arises from the entire factual complex. Now, there is not much good talking

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about what would happen if it had been done differently.

MR. CAREY: It is an academic discussion, I agree.

THE COURT: The falsification arises from the whole complex. There has to be something additional before you can say that a man signing his own name to a firearm record is falsifying. The falsification is that when he signed it he didn't intend to be a transferee of the weapon. He only intended to be a part of the subterfuge or scheme to get these weapons off the books. That's all.

MR. CAREY: That is correct. But you don't need the subsequent transfer documents that were handed out to be able to prove that case.

THE COURT: There has to be some scheme.

MR. CAREY: That is proved, your Honor.

MR. HOLMAN: Defendant Grady excepts to this charge, your Honor.

MR. CAREY: In connection with this, the government has requested on the second page of supplemental request number one, which your Honor has ruled upon, that the court instruct the jury regarding Section 922(b)5 the Gun Control Act of 1968, and requests it on the theory that is the best definition in the statute of what Section 922(m) means by the word "Transferee."

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THE COURT: I don't see any need to do that for this reason: The regulations promulgated under 922(m) have the force of law. They use an expression "transferee," and I think in the context of this case that is a perfectly clear term and I don't see any purpose in bringing in a statute that isn't even mentioned in any of your pretrial proceedings. I know that the citation at the end of a count in an indictment is not part of the indictment. I don't believe that I should inject in here something that isn't necessary. CFR is sufficient to support the charge.

MR. CAREY: The question is in the jury's mind what is a transferee. I am offering the charge on page 2 of supplemental request number one as a legal definition given in the Gun Control Act of 1968.

THE COURT: Any objection to supplemental request number one?

MR. HOLMAN: Yes, your Honor. The fact that (b)5 is not charged by the grand jury I think is a pretty persuasive reason.

THE COURT: We are charging 1778-125 (e) of 26 CFR.

MR. CAREY: The indictment charges -- this is the way I see the structure of this. The indictment charges the defendant with a failure to properly maintain his records. Section 923 and the regulations then tell you what record

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he is required to keep, and that record shall list the name and address of the person who is the transferee of a firearm.

I am merely stating, your Honor, that what a transferee is to the jury is going to still require a legal interpretation, and that is some evidence of what a transferee is intended to mean in that section. The court may consider section 922 (b)5 which states that records of the name, age and place of residence of a person -- that the name, place, age and place of residence must be recorded for a person to whom a licensed dealer sells or delivers any firearm.

THE COURT: You see, there is nothing false about the name. The falsification of the records is that they are using a true name as a means to conceal and obfuscate the chain of possession of the particular weapon. Thats really all they were doing. That's what they knew they were doing.

MR. CAREY: Sold to someone other than the people who signed their names.

MR. HOLMAN: Including Grady?

THE COURT: Not Grady. Grady isn't in any of the counts.

MR. HOLMAN: Is that your contention on the record, Grady was the true purchaser?

MR. CAREY: Grady or someone else.

THE COURT: As to the particular gun that Grady

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signed for it is not a count in these particular counts, 18 and below

MR. BRUCE: That would follow from the testimony given of the six or seven people that picked up their own particular weapons.

THE COURT: Well, if they believe that. There is conflicting testimony on that score.

I will tell them that they have to take the statute the way they find it and they are not concerned about whether they think it should be different or whether they agree with it or not.

THE COURT: How would that conflict with your charge as to the law that must be accepted by the juror, whether they believe it or not, that they must follow it; would there be a conflict if they were to interpret the statute on their own?

They are not permitted to interpret the statute. You see, I will interpret the statute for them with sufficient clarity so that if there is a conviction and it is reviewed on appeal, the Court of Appeals will know what the jury was deciding and weigh it against the sufficiency of the evidence. You cannot permit a jury to interpret a statute, even though it is a bizarre, vague or unclear statute.

MR. BRUCE: I misunderstood your statement when

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you said let them take it as they wish.

THE COURT: That is not what I said.

MR. BRUCE: I am sorry.

THE COURT: Then I was going to charge request number 11.

MR. CAREY: May I ask what happened to supplemental request number one which you were just discussing?

THE COURT: Number one is not given. I decline to charge supplemental request number one.

MR. CAREY: Not even any part of it?

THE COURT: Not any part of number one.

MR. CAREY: Including Section 922(b)(5)? I think that's what Mr. Bruce's concern was. What is the definition of a transferee?

THE COURT: Perhaps a better explanation of this thing is to go back to the use of the word strawman. That always bothered me because I think it is something which belongs in a different context. What the gist is, these purchasers, although real, were strawmen. That is the contention.

MR. BRUCE: I disagree with that.

MR. HOLMAN: If this were a civil case I would have no problem. That is why in my pretrial motions I suggested that you could not use that kind of language in a

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criminal case.

THE COURT: I agree you should not. But you can falsify records by putting down a person's true name and genuine signature if that person is not in fact the transferee and does not intend to be the transferee and the transferee is in truth and fact somebody else. I may have to put it in just those words.

MR. DURKAN: On that point, going back to the table where the men sat around and decided how they would buy weapons, did they not, when they decided they would buy the weapons, and granted for the moment they decided, did they not decide, McCarthy, Dennehy, Grady and so forth, did they not decide at that time that they themselves were going to buy weapons and did they not follow that through by signing their true names and addresses as requested by Jankowski and required by the statute?

THE COURT: That is your theory of the facts. If the jury so finds. The extra kicker in that problem is that this theory of immediately transferring it to these non existent people to block the chain of devolution of the gun. That is the only thing that in my view makes this a violation as to all but the exporting counts.

MR. BRUCE: If you were to charge the way that you propose, that would eliminate that immediately. That idea

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of considering whether this was a situation that these men contemplated, that they went in and signed their names, that there was going to be a further transaction. I think that is a question of fact for the jury which will be eliminated by your charge.

THE COURT: How is it eliminated?

MR. BRUCE: You will say if they did not intend, then there is nothing for the jury to consider. That is a question of law. It becomes a question for your charge.

THE COURT: My view of the law in this matter is if they did not intend to be the transferees of this weapon but they intended instead to sign so that somebody else could funnel these weapons off through a different devolution or so they could immediately drop them in the hands of non existent or deceased people and that that was a false entry. If I go in there intending to retransfer to a deceased person immediately and never have the weapon in my possession, not to pick it out, do anything with it, I say to you I'm not a transferee.

MR. BRUCE: It would be eliminated. The question of fact presented to the jury would be whether this was contemporaneous with the intent.

THE COURT: I am not eliminating it. I am finding no facts.

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MR. HOLMAN: You keep saying a deceased or fictitious person. I don't understand.

THE COURT: Isn't there testimony as to both?

MR. HOLMAN: No, your Honor.

MR. DURKAN: Testimony by Casey, one witness, of somebody being deceased. There is testimony by Casey that he either understood, I'm not sure how it came in, but I do know he did mention that the transferee or his transferee in his case was a deceased person.

THE COURT: He told me one of the co-conspirators, either Grady himself or in Grady's presence said they were going to have them transferred to deceased people.

MR. DURKAN: I'm wondering, your Honor, why the transfer following the legal acquisition, whether they actually took possession or not, why that transfer becomes a violation of 922 (m)? Supposing I bought one of those guns --

THE COURT: You may treat an entry false only if you find that it was an intentional subterfuge having the effect of covering up the devolution of ownership of the weapon so the trail would get lost by reason of such transfer. The entry would not be false unless at the time the entry was made the person signing the book was not regarded by Jankowski and Grady as the true transferee of the weapon

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but rather as a person assigning a line or lines in the book solely to act as a front or cover up for guns which were intended to be transferred or delivered to someone else.

That I think nails it down sufficiently.

MR. DURKAN: Where was the proof that there was such an intent at the time the guns were acquired?

THE COURT: That intent may be inferred from these conversations, if believed, from whether he paid for the guns, whether he ever possessed it or selected it or did any of those things which common sense tells you that an ordinary person making a good faith purchase of a rifle from a sporting goods store would do.

MR. DURKAN: Did not he sign as transferor? Didn't he exercise the ownership we claim he had?

THE COURT: I don't think on the facts of the case if you believe --

MR. HOLMAN: May we have an exception to that charge?

THE COURT: Yes.

MR. BRUCE: The testimony of McMorris, who was very upset over the fact of who was running around with his gun, who has his gun, shows he considered himself the true owner and the transferee from Jankowski to himself of that weapon. There was something subsequent to be done --

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THE COURT: That is a jury question. If the jury so thinks, then as to any count that went to McMorris they should acquit.

MR. BRUCE: I am afraid your charge in that way will render it impossible for them to look at it and consider the factual situation.

MR. DURKAN: I think so too.

MR. BRUCE: It is too restrictive, too compelling for a jury just to pass it off and say that will be the end of the deliberation. I don't think it is fair to the defense, your Honor.

THE COURT: I will define willfully and knowingly in the traditional form we have always used.

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MR. BRUCE: That would charge us out of court.

THE COURT: Oh, go on, you know better. It's not my intention to charge anybody out of court.

MR. BRUCE: I am only joking, Judge. A bit of whimsy.

THE COURT: If these men agreed to go in and fake records, they committed the crime charged, which is the substantive and also the conspiracy. If they were truth buying these guns and were the transferees of the guns in the normal sense of that word, then they ought to be acquitted.

MR. BRUCE: That makes it again difficult because we have to establish the fact in the eyes of the jury to decide as far as Jankowski is concerned, he is the one that would be getting really the very difficult position which would constitute bias in my estimation, but Jankowski had nothing really to do as the evidence showed with the actual conferences, alleged conferences that went on prior to the coming and signing of the book.

THE COURT: Don't let's get into that any further. I will take request number 11. I will define aiding and abetting substantially in the form requested. I am crossing out that sentence which says "The standard is not that high or rigid."

I am charging jointly both as to substantive false

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registration counts and the exportation. I am taking out the reference to exportation.

MR. CAREY: That is the charge.

THE COURT: Yes, I am taking out the part of the exportation of firearms because the aiding and abetting applies to all counts. Then I go to count 19 and read it and then I would read the regulation and state the elements. I will instruct them that semi-automatic 30 caliber rifles are designated on the list.

MR. HOLMAN: Your Honor, with respect to the export count are you charging government's request number 21?

THE COURT: We are charging the four elements.

MR. HOLMAN: That is your charge, the government's request number 21?

THE COURT: No, it's not. They must find beyond a reasonable doubt the following elements, one, that they exported from the United States the firearms listed in the indictment; two, that such firearms were on the United States Munitions List; three, that the exported them without first having obtained a license or written approval from the Secretary of State or an exception, and fourth, that he acted unlawfully, knowingly and willfully.

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Then I will explain aiding and abetting.

MR. HOLMAN: That is my point, your Honor. All right.

MR. BRUCE: In that respect --

THE COURT: Export means taking them out of the United States in any manner, any article or equipment on the munitions list. I am staying away from technical data. This is not a technical case. I will tell them that the 30 caliber rifles are designated on the list.

MR. BRUCE: In that charge --

THE COURT: It doesn't affect your client.

MR. BRUCE: I was wondering about the aiding and abetting.

THE COURT: It doesn't affect your client. Is there anything I didn't cover with you or anything else you want?

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MR. BRUCE: Yes, Judge. I'd like in the summation, would you allow counsel to touch very briefly on that which you will charge as to basic matters of presumption of innocence, the obligation of the juror, the purpose --

THE COURT: You know, that isn't our custom and practice, to permit you to define the terms. You can use the terms, you can ask the jury -- but I don't want you to define them . It's a waste of time. It takes up the work I am to do and there may be several variations.

I don't want you telling them law. I want you to give them your summation of what you think the evidence shows.

MR. BRUCE: Not that, Judge, but if there is a reasonable doubt and if they can find a reasonable doubt, not to define it --

THE COURT: You can ask them to find it but not define it.

MR. BRUCE: And also tell them that their oath embraces what they have to do.

THE COURT: You can do that.

MR. CAREY: Your Honor, I request that the charge be given which is contained in the revised request No. 12, that the jury is to be told that there is no

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requirement in this case, in the laws effecting this case that the Government prove that any firearm was operable.

THE COURT: I am going to read them the statute. I think I told you that earlier. I will not charge them as a matter of law that these particular rifles are firearms. There is plenty of evidence on that score. I am not going to remove that issue from them. I will give them the definition of the firearm which includes those silly words, may readily be converted to expel a projectile. They have expert testimony and they can look at the rifles if they want to.

MR. BRUCE: That is good enough.

MR. DURKAN: I notice we have been taking some exceptions and not others. Are we supposed to do them now or later?

THE COURT: Any you take now you don't have to take again. It is my preference that exceptions be taken as promptly as possible so the jury doesn't sit in the box and become restless. So any you have taken with me now you don't need to take again. You will have an opportunity to state your exceptions after the charge is given.

As I say, I do not mind saying that if anything needs to be said that wasn't covered. I am prepared to take recesses after summations, but I prefer to charge

before lunch if I can do so. Perhaps let them go to lunch as a body.

MR. BRUCE: Will you excuse the alternates before they deliberate?

THE COURT: Oh, yes, certainly. I would excuse them before lunch.

[Adjourned to March 12, 1976 at ten a.m.]

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UNITED STATES OF AMERICA,

- v s - S76 Cr. 227 CLB

FRANK GRADY and
JOHN JANKOWSKI.

March 12, 1976

[10:20 a.m.]

- - -

[In the courtroom in the absence of the jury:]

MR. DURKAN: Your Honor, I have motions to make, but Mr. Bruce isn't here.

THE COURT: Mr. Bruce is unexplainably late. However, the Clerk told me that you have an application and since the application only affects Mr. Grady, I will take it.

MR. DURKAN: I am presenting it on behalf of Mr. Grady, your Honor. It is in the form of a motion, and I so move at this time that the testimony of the witness Casey with respect to the events that occurred after the point where he described receiving the guns from Jankowski and putting them in the car up around, somewhere up in Yonkers, I move that that testimony from that point on be stricken, because it describes a course of action that has not been established as being violative of any

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statute; that it is not in any way criminal in nature and has not been shown to be criminal in nature, and everything including the so-called admissions made thereafter with respect to these acts which have not been established as criminal acts, that all that testimony be stricken and that the jury be instructed to disregard it.

It may have been from the posture of this case perfectly proper and legal, and of course with respect to that, that in the summation if the U. S. Attorney chooses to make any reference to it, that he may not refer to it as a criminal act.

THE COURT: May I be quite clear on exactly what testimony it is you are seeking to strike? I don't know if we have Mr. Casey's transcript yet, do we --

MR. CAREY: I do not have it in my possession, your Honor.

THE COURT: I don't either.

MR. DURKAN: If your Honor please, it's that portion of the testimony, just for the sake of continuity, he testified that he signed, he testified that he then went one night to Jankowski's store where he and some other people took the guns, put them in a car, and that the last he saw of them they were being put in the trunk of a car up around Tibbets Park, I believe, in Yonkers.

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At that point, I believe he said himself some two weeks after signing in May of 1970, from that point on, he had no testimony to offer with respect to the alleged -- to the rifles alleged in this particular indictment. His testimony from that point on had to do with going one night a year later to some basement, I believe, or some apartment house in Yonkers where he saw people and he participated in putting World War II guns in a crate.

THE COURT: That is what you want to strike, the World War II guns?

MR. DURKAN: No, your Honor. I want to strike everything from that point on.

THE COURT: From what point on?

MR. DURKAN: From the point of the last time he knew anything about the guns in this case.

THE COURT: You see, the Court believes that jurors could infer that the guns were, if I recollect correctly, taken from one automobile and put into the automobile of Martin Lyons near Tibbets Park were the guns in this case,the guns in Count 20.

MR. DURKAN: Granted, your Honor.

THE COURT: That is the circumstantial evidence or the circumstantial inference they are trying to make.

MR. DURKAN: I'm not disputing that,your Honor.

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Then, from that point on, Casey jumps almost a full year in his testimony and he goes on to describe a course of action, visiting someplace in Yonkers, I believe, crating guns.

Then he describes further from that, going down to an apartment house in the Bronx --

THE COURT: And that is what you want to strike?

MR. DURKAN: Yes.

THE COURT: You agree that the Tibbets Park testimony is admissible if believed?

MR. DURKAN: I am not disputing that. I certainly will challenge it as to its authenticity, but that isn't part of my motion.

My motion says that from two weeks after he signed in May of 1970, anything after that point on is not to be considered by this jury. There is no proof that it was criminal, there is no proof that it was violative of any statute. There is no proof that any of the so-called admissions which pertain to it have any bearing in this case, and I submit to the Court that to let the jury consider that in the case of this indictment here is grossly and totally prejudicial to the rights of my client; and I might add also to Mr. Jankowski.

THE COURT: Not to Mr. Jankowski. He is not

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charged in Count 19.

MR. DURKAN: That is correct, your Honor. But I submit to the Court that testimony of that nature which I sought to exclude at that time which I now move to be stricken here is so absolutely destructive because the jury is going to say, well, they did it in '70, they were doing it still in '71, and wrap up an indictment as quick as a flash in terms of a guilty finding. And until and unless the U. S. Attorney can establish that this, these incidents were in fact criminal acts, they have no bearing, have nothing to do with this case at all. And I would move, your Honor, that everything from that point on be stricken.

THE COURT: Mr. Carey?

MR. CAREY: Your Honor, first, the Government offered the testimony of Mr. Casey in the area that Mr. Durkan has addressed himself to as subsequent similar acts of the defendant Grady, as evidence of Mr. Grady's motive, of his knowledge, of what he had done earlier, of his intent. It was not in fact a full year later, all of the acts were not in fact a full year later, if my recollection serves me correctly regarding those things about which Mr. Casey testified, but were in October of 1970 in part, and also at later times.

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The Government in any event need not prove beyond a reasonable doubt that those acts themselves constituted a crime. They are similar acts to those which are charged in the indictment. The jury need not find beyond a reasonable doubt that they constituted a crime or that the defendant himself was guilty of an offense in violation of the law.

The jury may, however, consider those acts and reasonable inferences which may be drawn from those acts in determining whether or not the defendant had the requisite guilty will, knowledge and intention in committing the crimes of which he is charged with in this particular case.

THE COURT: There is evidence of course as far as that goes that he never had any export license. I believe that I should give a limiting instruction as to this testimony. I don't believe I am required to strike it out because it probably is admissible as bearing upon his intent, motive, and so forth; and it also of course corroborates Casey's presentation of himself as a full fledged member of whatever group of people was dealing with these rifles. So it had bearing on the weight to be given to Casey's testimony.

I would welcome a suggestion as to exactly how

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that limiting instruction be phrased. I am not inclined to strike it out, but I w ll give a limiting instruction, and I will do that before you sum up, of course.

MR. DURKAN: Your Honor, my point is in moving at all, is that if even any phase of it is permitted in, I would say if the U. S. Attorney had established that what went on in these basement apartments, whether it be in October of '70 or October of '71, it doesn't make any difference. If that is not established as being violative of the statute, if that is not established as being a crime, then it has no bearing in this case.

They might have been going on a hunting trip. Who knows where they were going? Well, Mr. Casey laughs, but believe me, as far as I am concerned in contesting this point it is an important and essential part of the People's case that they establish that this act which they are going to shout about, I know, is shown to be an illegal act. And they can't at this point without having established that it was an illegal act, go in as part of the case.

THE COURT: The record will note the presence of Mr. Bruce at this time.

MR. CAREY: Your HOnor, may I be heard?

THE COURT: Very briefly, because I am already

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starting 25 minutes late.

MR. CAREY: Yes, your Honor. It is the Government's position that the only instruction that should be given to the jury regarding this testimony is that if they find on the basis of the independent evidence that Mr. Jankowski was indeed a member of the conspiracy charged in the indictment, and they find that these particular acts testified to by Mr. Casey were acts done in furtherance of that very same conspiracy, despite the fact that Mr. Jankowski may not have known about them or participated in them --

THE COURT: Let's stick with Mr. Grady becasue I only took this testimony bearing on Count 19.

MR. CAREY: It's true that it only bears on Count 19 in terms of its being connected directly with an export. However, it does bear upon all the previous counts to Count 19 in that it shows a motive for falsifying the record.

THE COURT: And Grady's part.

MR. CAREY: And also upon Mr. Jankowski's.

THE COURT: As I understand it, he wasn't there. There is no showing the guns came from Mr. Jankowski.

MR. CAREY: It is not necessary for the

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Government to prove that they had come from Mr. Jankowski, from Mr. Jankowski as a member of the conspiracy which has as its purpose the transfer of firearms without registering them.

THE COURT: That is not the purpose of the conspiracy.

MR. CAREY: In fact, there is some evidence that is what they were doing.

MR. DURKAN: How could evidence about guns a year later which were not even identified, how could they be evidence of the conspiracy against Grady and Jankowski in May of 1970?

Absolutely not a single solitary link of evidence anywhere to show that the acts in whenever it was, late '70 --

THE COURT: I must say that I take the view that this particular evidence pertains only to Grady and it only pertains to Count 19.

MR. DURKAN: Your Honor, I agree with your Honor.

THE COURT: I am willing to give a limiting instruction and I am trying to give it in a fairly phrased manner. As I understand it, these were activities in the Bronx with somebody's basement with a crate, a trunk,

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is that what we are talking about?

MR. DURKAN: The sequence as I recall it was after Tibbets Brook Park when those guns in cartons were given to Lyons, from that point on Mr. Casey then jumps, whether it be a day or month or a year, it doesn't make any difference, he jumps to a scene somewhere in Yonkers where he says he, and I think he said Grady, and I think he said somebody else, but it doesn't make any difference, he participated in putting guns in a crate. What guns, we don't know. For what purpose, we don't know. Guns that obviously were not these guns --

THE COURT: It was in the Bronx where he did this.

MR. DURKAN: No, your Honor. If I am not mistaken, this was in Yonkers. And he identified the guns as I recall, as old guns. I think he said pretty beat up.

The guns in this case from all the evidence so far are brand new, coming from the Universal people through Roskin Brothers.

He goes on further to describe a visit at a later time to an apartment house in the Bronx where he saw a trunk with a name stencilled on it, which contained guns. Again, guns that were old guns. Guns that have nothing whatsoever to do with this indictment.

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I submit to your Honor, to have any part of that testimony and the so-called admissions that flow therefrom presented to this jury cannot but result in an absolute deprivation of my client's right to a fair trial.

THE COURT: I decline to strike it out, but I will give a limiting instruction with respect to it. I also will tell the jury it's not to be considered as against Jankowski.

MR. DURKAN: That of course I agree with your Honor, but if I may, your Honor, most respectfully, even limiting how can they possibly put it out of their minds in any way when there is no connection here?

THE COURT: It has very strong bearing on the knowledge and intent of your client.

MR. DURKAN: But your Honor, it's not shown to be illegal. There is nothing illegal about putting guns in a crate; there is nothing illegal about nailing a board on top of them; there is no proof here that this was illegal.

THE COURT: I really think I couldn't go along with that, because there is at least a suggestion it is World War II rifles; there is at least a suggestion it was going to Ireland, and there is evidence he had no export permit. So there is no evidence it was illegal,

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but I certainly wouldn't tell the jury that.

MR. DURKAN: There is no connection shown between the conspiracy and the export in this case. This is a totally different incident. Absolutely and totally.

THE COURT: All right. While we are here, while we are still not beginning promptly as I hoped we would, I do believe that Mr. Clearwater's testimony is not admissible as against Grady, and I think I ought to tell them that.

MR. CAREY: Your Honor, again the --

THE COURT: Very briefly, Mr. Carey.

MR. CAREY: Certainly.

The limiting instruction that your Honor would like to give with respect to the trunks would properly be given if at all only with respect to those counts charging substantive violation, referring to failure to keep proper records. It is relevant in the Government's opinion to the conspiracy to violate the gun control laws by keeping false records. The conspiracy to violate those laws is not limited to the acts which comprise the substantive Counts 2 through 18.

THE COURT: I don't agree with that at all. I think it is possible for a man particularly in this Circuit where they love to find multiple conspiracies

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the Court of Appeals where there is any basis for doing it, but in this case it is very possible and indeed I must say likely that Mr. Grady was engaged in one set of transactions with second-hand guns in Yonkers and the Bronx in which Jankowski had no part, and at the same time he may have been engaged with Jankowski in a record falsifying conspiracy which is charged here.

All that the testimony as to the guns, second-hand guns, is relevant towards is the motive or knowledge or intent of Mr. Grady. And also the weight to be given to the testimony of Casey. As to those two matters, I think it is admissible and that's all.

MR. DURKAN: If your Honor please, I of course respectfully except to it. I would also ask the Court for a direction to the U. S. Attorney that in no manner are these other incidents to be referred to as illegal acts, because there is no proof that they were illegal.

MR. CAREY: That would be a conclusion of law in any event, your Honor, which I wouldn't make.

THE COURT: He says he is not going to do it, so I wouldn't make any ruling.

MR. DURKAN: All right, your Honor. I will accept his word on it.

MR. CAREY: I might refer to it as corroboration

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of Mr. Casey, your Honor, but I'm not going to refer to them as illegal acts of Mr. Casey.

THE COURT: All right. That is the understanding.

MR. CAREY: I apologize, but I forget the issue to which your Honor addressed me.

THE COURT: We are talking about Clearwater.

MR. CAREY: The testimony Mr. Clearwater your Honor suggested should be limited to evidence against Mr. Jankowski. However, it seems here that Mr. Clearwater's -- the events about which Mr. Clearwater testified if taken in the light most favorable to the Government came at a time when Mr. Grady and Mr. Jankowski were dealing on a substantial basis in falsifying Mr. Jankowski's records. That act of Mr. Jankowski is certainly within the scope of the conspiracy in terms of time, in terms of purpose, in terms of everything which would identify the acts Mr. Clearwater testified about. And the conspiracy law --

THE COURT: I just don't agree with that at all. I think a reasonable juror would have to stand on his head to reach that inference because the conspiracy here is to falsify records, and the dealings between Jankowski and Clearwater are working toward finding another

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way of getting guns without the necessity of falsifying Jankowski's records, because the guns would never appear.

MR. CARTY: That is not true, your Honor. That would be the most obvious way Mr. Jankowski would falsify his records, by simply not recording either the purchase or sale. That is the clearest example of a falsification. What could be clearer?

In this case he's concocted the subterfuge of entering somebody's name. But if he didn't record anybody's name, that is certainly evidence that he was trying to get guns unregistered when the law requires him to register them.

THE COURT: Perhaps it is a jury question, although I must say I don't see it that way.

MR. HOLMAN: In respect to Mr. Grady's affirmative defense of the statute of limitations, I respectfully add an additional authority. That is 2nd Circuit authority.

THE COURT: Why don't you give me that, either a Xerox or the case citation, and let's get on with what we are doing now. If I find a case that entirely squares with the Moskowitz case in the Second Circuit, if there should be a verdict adverse to your client, I will deal with it in a post-trial motion.

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MR. HOLMAN: I will give you the cite right now, if the Clerk wants to hand it to you.

THE COURT: Bring in the jury.

What is the citation?

MR. HOLMAN: 162 Fed. 2d Sec. 819. United States v. Strewel.

MR. DURKAN: On the statute of limitations, just so we are clear on the record, I submit that I have a right and I want a direction from the Court at this stage, I have a right to comment on it on the statute of limitations and the five years --

THE COURT: You cannot comment on the statute of limitations in that sense. However, you may call attention to the period of time which has expired between the date of the events and the date of the testimony, as bearing on the weight and credibility of the witnesses. But the statute of limitations as an affirmative defense is not before this jury.

If you want to argue that this witness is testifying in 1976 about something that took place in the Spring of 1970, that is a perfectly permissible argument which nobody will take any umbrage at whatsoever.

MR. DURKAN: In other words, is it your Honor's direction that the mention of a five-year statute per se --

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THE COURT: That would be improper.

[The jury entered the courtroom.]

THE COURT: Good morning, ladies and gentlemen.

Members of the jury, before you hear any closing arguments by the attorneys, there is one additional limiting instruction I want to give you with respect to the use or consideration of certain evidence in the case. If in describing this testimony I say anything that doesn't accord with your memory of what the testimony is, put that out of your mind because it is your recollection of the testimony which counts.

I am talking about certain of the testimony of the witness Casey, which took place after an event he described where he said he had been in a car near Tibbets Brook Park and they moved guns from one vehicle to another. Then after he testified about that event, he testified about an event, if I recall correctly, which took place in Yonkers involving old or second-hand rifles or guns which he described I think as World War II guns in crates, and I think he testified about the later event in the Bronx having to do with a trunk.

As to those two events, they are not charged as crimes in the indictment and you are not to infer that there was any specific illegalities in any of those

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acts either on the part of Mr. Casey or anybody who was there with him, including Mr. Grady. Itis not part of this case, that testimony is permitted in this trial for very limited purposes, and those limited purposes are to permit you to consider the motive or lack of motive, the knowledge or lack of knowledge, or the intent or state of mind of Mr. Grady in connection with the matters charged in the case, to the extent that you, the jury, believe it has bearing on those issues. And also to permit you in judging the credibility or truthfulness of the witness Casey in ascertaining what, if any, his knowledge and participation was with respect to the defendant Grady.

I would further state to you that those particular events, that is to say the events about the World War II guns or second-hand guns and the events about the trunk in the Bronx do not pertain in any way to the defendant Jankowski. They are admitted only for their particular purposes which I have just indicated to the jury.

That is the manner in which you will treat them in your deliberations.

At this time Mr. Carey will make a closing summation for the Goverrment.

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CHARGE OF THE COURT

[Brieant, J.]

THE COURT: Mrs. Rodriguez and members of the jury, we are now at that stage in the trial where you will soon undertake your final function as jurors and here you perform one of the most sacred obligations of citizenship. That is acting as ministers of justice.

You are to discharge this final duty in an attitude of complete fairness and impartiality, and as I emphasized when you were first selected, without bias or prejudice for or against the Government or any defendant as parties to this controversy.

Let me state, the fact that the Government is a party entitles it to no greater consideration than that accorded to any other party to a litigation. By the same token, it is entitled to no less consideration. All parties individual and Government alike, stand as equals before the bar of justice.

Your final role here, as I have said several times, is to decide and pass upon the fact issues in the case. You are the sole and exclusive judges of the fact. You determine the weight of the evidence. You appraise the credibility, truthfulness of the witnesses, and you draw the reasonable inferences from the evidence, and you

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resolve such conflicts as there may be in the evidence.

I will later discuss with you how you determine the credibility of witnesses.

My final function here is to instruct you as to the law and it is your duty to accept these instructions as to the law and then apply them to the facts as you may find them to be. You are not to consider any one instruction that I may give you alone as stating the law, but you must consider all of my instructions, taken together as a whole.

With respect to any fact matter, it is your recollection and yours alone that governs. Anything that the lawyers, either for the Government or the defendants, may have said with respect to matters in evidence, whether during the trial, in a question, in argument or in summations, is not to be substituted for your own recollection of what the evidence is.

So, too, anything that I might have said during the trial or anything that I might refer to during the course of giving my instructions as to any matter in evidence is not to be taken in lieu of your own recollection.

The attorneys not only have their right, but it is their duty, to make objections and to press whatever legal theories they may have. They are simply performing

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their duty. Any evidence as to which an objection was sustained by the Court and any evidence ordered stricken out by the Court must be disregarded in its entirety.

Put out of your mind any exchanges which may have occurred during the trial between any of these fine lawyers or any attorney and the Court. It's not my function to favor one side or the other, nor criticize anybody in any way whatsoever or to indicate to you, the jury, in any way that I have any opinion as to the truthfulness of any witness or as to whether or not any defendant has been shown to be guilty by the required level of proof or not. That is your function and yours alone, and I leave it entirely to you.

So please don't assume that I hold any attitude or any opinion in any matters concerning this case.

Please don't reach any conclusion that I may tend to favor one side or the other in the case, because I do not. Of course, as I told you earlier, the indictment here itself is no evidence of the crime charged. Instead, an indictment is merely the method or procedure under the law whereby persons accused of crimes by a Grand Jury are brought into court to have their case determined by a trial jury such as yourselves.

Therefore, the indictment must be given no

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evidentiary value. It shall be treated by you only as an accusation. It is not evidence or proof of the defendants' guilt and no weight or significance whatsoever is to be given to the fact that an indictment has been returned against the defendants.

Each has pleaded not guilty, and thus the Government has the burden of proving the charges beyond a reasonable doubt.

A defendant does not have to prove his innocence. On the contrary, he is presumed to be innocent of the accusations against him contained in the indictment. This presumption of innocence was in his favor at the start of the trial, as I believe I told you when you were selected. It continued in his favor throughout the entire trial, and is in his favor now, and it remains in his favor during the course of your deliberations in the jury room. And the presumption of innocence is removed only if and when you, the jury, are satisfied that the Government has sustained its burden of proving the guilt of a defendant beyond a reasonable doubt as to the particular charge then being considered.

You are to consider each defendant and each charge separately. The burden of proof, the presumption of innocence applies equally to each defendant in each

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charge in which he is named. Unless you are convinced that a defendant has been proved guilty of the particular charge or count that you are then considering, then you must find him not guilty.

The question naturally comes up, what is a reasonable doubt? Well, members of the jury, those words almost define themselves. That is a doubt founded on reason arising out of the evidence in the case or the lack of evidence. It is a doubt which a reasonable person has after carefully weighing all the evidence.

Reasonable doubt is a doubt that appeals to your reason, to your judgment, to your common sense and to your experience. It is not caprice or whim or speculation or conjecture or suspicion. It is not an excuse to avoid the performance of an unpleasant duty. It is not sympathy for a defendant.

If, after fair and impartial consideration of all the evidence, you can candidly and honestly say that you are not satisfied of the guilt of the defendant as to a particular count, that you do not have an abiding conviction of his guilt of that particular charge, if you have such a doubt as would cause you as prudent persons to hesitate before acting in matters of importance to yourselves, then you have a reasonable doubt and in that

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circumstance it is your duty to acquit that defendant as to that count.

On the other hand, if after such an impartial and fair consideration of all the evidence you can candidly and honestly say you do have an abiding conviction of the defendant's guilt, such a conviction as you would be willing to act upon in important, weighty matters of personal affairs of your own life, then you have no reasonable doubt and under those circumstances it is your duty to convict.

Reasonable doubt does not mean a positive certainty or beyond all possible doubt. If that were the rule, few men, however guilty they might be, would ever be convicted, because it is practically impossible for a person to be absolutely and completely convinced of a controverted fact which by its nature is not susceptible of mathematical certainty.

For that reason, the law in a criminal case is that it is sufficient if the guilt of a defendant be established as to a particular count beyond a reasonable doubt, not beyond all possible doubt.

The indictment in this case, members of the jury, now contains eleven counts. Each count charges a separate crime, and each must be considered by you separately.

Where more than one person is named in a count,

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you will be asked to state a separate verdict as to each defendant charged therein. You will be asked to state a separate verdict as to each count.

Frank Grady and John Jankowski are the only defendants on trial before you, and they are the only persons whose case you will be asked to decide in your verdict. Although as I shall explain to you shortly, in considering some of the counts in this case, you may have to determine the nature of the participation, if any, of John O'Brien, or William Dennehy, or John Casey, or Edward McMorris, and others who you may find to have been co-conspirators.

In this connection you are not to concern yourselves or speculate upon the reasons why these two persons are now being tried here together, or why any of the others were not indicted. These are matters which are not for your concern in any way.

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In the determination which you will make you must bear in mind that guilt is personal. Whether or not either defendant on trial before you has been proved guilty beyond a reasonable doubt of any crime, must be determined separately as to that charge with respect to him solely on the evidence presented against him or the lack of evidence.

The case of a defendant stands or falls upon the proof or lack of proof of the charge against him and not against somebody else. Each of the defendants on trial here is entitled to have his case determined by the jury soley on the evidence introduced against him or the lack thereof.

Now, for your guidance in considering the evidence you have heard, I must tell you there are two classes of evidence recognized and admitted in courts of justice, upon either of which the jurors may find an accused guilty of crime. One is called direct evidence and the other is called circumstantial evidence. Direct evidence tends to show the fact in issue without any need for any other amplification, although, of course, there is always the question as to whether it is to be believed.

Circumstantial evidence is evidence that tends to show facts from which the fact in issue may reasonably

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be inferred. It is evidence which tends to prove the fact in issue by proof of other facts which have a legitimate tendency to lead the mind to infer the facts sought to be established are true.

There is a traditional example. Let us assume we were trying this case in one of the upstairs courtrooms which had windows that look out on the street. Sometimes it is difficult to tell merely by looking out the window whether it is raining or not. But if you look out and you see people passing by in the streets who have their umbrellas up, you will usually come to the conclusion that it must be raining. You have direct evidence, the evidence of your own eyes, to tell you that the umbrellas are open down on the street. That constitutes circumstantial evidence from which you are entitled to conclude that it is raining. In other words, circumstantial evidence consists of the facts proved from which the jury may infer by a process of reasoning other facts which are in issue.

Circumstantial evidence, if believed, is of no less value than direct evidence. For in any case you must be convinced beyond a reasonable doubt of the guilt of a defendant before he may be convicted.

Now, in determining what evidence you will accept and what weight you will give to it, you must make

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your own evaluation of the testimony given by each of the witnesses and determine what you believe to be the truth, and the degree of weight you choose to give to that testimony. The testimony of any witness may fail to conform to the facts as they occurred because the witness is intentionally telling a falsehood or because the witness did not accurately see or hear what he testified about or because his recollection of the event is faulty or because he hasn't expressed himself clearly in giving his testimony. There is no magic formula by which you can evaluate testimony. You bring to this courtroom all of the experience and background of your lives. Each of you in your everyday affairs determines for yourselves the reliability of statements made to you by other people. The same tests you apply in your everyday dealings are the tests which you apply in your jury deliberations.

You may, of course, consider the interest or lack of interest of any witness in the outcome of this case. A witness who is interested in the outcome of a case is not necessarily unworthy of belief. But the interest of the witness is a factor or possible motive which you may consider in determining the weight and credibility to be given to his testimony.

In doing this you may also consider whether the

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testimony of a witness is corroborated by the testimony of others, or by documentary evidence or by exhibits. You may consider the bias or prejudice of a witness, if there be any; the manner in which the witness gives his testimony on the stand; the appearance and conduct of a witness in giving his testimony; the opportunity he had to observe the facts concerning which he testifies; and the probability or improbability of the testimony in the light of all of the other events in the case. You may also consider whether any witness had a motive to lie. These are all matters to be taken into your consideration in determining the truthfulness and weight, if any, which you will assign to a witness' testimony.

You may consider the effect, if any, of prior inconsistent statements or prior inconsistent testimony which a witness may have given in front of the Grand Jury. You may consider all facts which in your mind have a reasonable bearing on determining whether or not a witness is truthful.

If such considerations make it appear there is a discrepancy in the testimony, you will have to consider whether this can be reconciled by fitting the testimony of two or more witnesses together. If that is not possible, then you will have to determine which of the conflicting

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versions you will accept.

If you, the jury, find that any witness has wilfully testified falsely as to any material fact, you may, but you need not, disregard the entire testimony of that witness on the principle that one who testifies falsely as to one material fact may testify falsely about everything, but you are not required to consider such a witness as totally unworthy of belief and you may accept so much of his testimony as you believe as being true and disregard what you believe as being false.

You, as the sole judges of the facts, determine which of the witnesses you will believe, what portion of their testimony you will accept, and what weight you will give to it.

Now, in every criminal case there is a rule which every defendant has the privilege and right to rely on, and that rule is that no defendant is compelled to take the witness stand or offer any testimony or produce any evidence. By pleading not guilty the defendants have, in effect, denied the charges on which they are being tried and they have put into issue every material fact concerning the allegations against them contained in the indictment. It is the Government which must prove them guilty beyond a reasonable doubt and they cannot be required to testify or

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disprove anything. All accused persons have the right to stand mute. The fact that a defendant doesn't take the stand in his defense may not be considered by you as any indication of guilt or as a basis for any inference adverse to the defendant whatsoever.

I have already explained to you the presumption of innocence and the Government's burden of proving guilt beyond a reasonable doubt before there may be any conviction. It was the right of the defendant, Frank Grady, not to come forward as a witness or to take the witness stand, and I charge you that you must not allow this fact in any way to prejudice him or consider it in any fashion whatsoever adverse to his interests in your deliberations. In fact, it is a matter which you should not even discuss in the jury room.

Now, the rules of evidence ordinarily don't permit witnesses to testify as to their opinions and conclusions, and there is an exception to this rule for those witnesses who are called expert witnesses. A witness who by his education, his experience has become expert in some art or science or profession or calling, such as Mr. McEatchon, the handwriting and document analyst, or Mr. Erickson, the firearms expert, who testified before you may state their opinion as to relevant and material matters

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in the field in which they are experts. And they may also state their reasons for their opinions. You should consider the expert opinions received in evidence in this case and give them such weight as you may think they deserve. If you decide that the opinion of an expert witness is not based on sufficient education and experience or if you should conclude that the reasons given in support of the opinion are not sound, or if you feel that his opinion is outweighed by other evidence, you may disregard that opinion entirely.

An expert witness is no different from any other witness in that you are at liberty to accept or reject all or part of his testimony.

Now, the Government called John O'Brien and William Dennehy, John Casey and Edward McMorris as witnesses at this trial. In the prosecution of crime the Government is frequently called upon to use accomplices as witnesses, persons who say that they are accomplices. Often it has no choice because the Government must rely upon such witnesses to transactions as there may be, and it is not frequent that outsiders or non-participants are witnesses to criminal activities or permitted to be present at discussions. The Government frequently must use such accomplice testimony because otherwise it would be

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difficult or impossible to detect or prosecute wrongdoers.

There is no requirement in the Federal Court that the testimony of an accomplice be corroborated. A conviction may rest upon the uncorroborated testimony of an accomplice, if you believe it and find it credible. But the fact that a witness may be an accomplice should be considered by you as bearing upon his credibility. However, it does not follow that just because a person has knowledge and participation in the same crime charged against one or more of these defendants he is not capable of giving a truthful version of what he has testified to. Their testimony, however, should be viewed with great caution and scrutinized carefully.

Now, the law permits a defendant upon his request to testify in his own behalf. The testimony of defendant Jankowski is before you. You must determine how far it is credible. The deep personal interest which every defendant has in the result of his case should be considered in determining the credibility of his testimony. You are instructed that interest may create a false motive for testimony. The greater the interest the stronger is the temptation, and the interest of a defendant is of a character possessed by no other witness and is therefore a matter which may affect the weight which should be given

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to that testimony. However, that is a matter entirely for you to determine using your own common sense in considering all of the evidence in this case.

Admissions of a defendant are among the most effectual proofs in law. They constitute the strongest sort of evidence against the party making the admissions, providing the admissions are made knowingly and voluntarily, and you are entitled to give weight to a defendant's admission in this case of facts whether made on the stand while testifying before you or in written statements or made in a conversation with a witness whose version of the conversation you believe. You consider such admissions as evidence of truth of the facts which you find that any such defendant has admitted voluntarily, either on the stand before you while testifying, or in conversations which you may find he had with other witnesses, and which the other witnesses in your opinion have truthfully reported to you in their testimony here at this trial.

Now, leaving these general matters which I have just stated to you, I am going to proceed with the indictment in this case which, as I told you earlier, is merely a formal accusation and not evidence in itself. I will now read from Count 1 of the indictment.

"The Grand Jury charges, one, from on or about

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January 1970 up to and including the date of the filing of this indictment, in the Southern District of New York, Frank Grady and John Jankowski, the defendants, unlawfully, wilfully and knowingly did combine, conspire, confederate and agree together and with others to the Grand Jury known and unknown to commit offenses against the United States, to wit, to violate Title 18, United States Code, Sections 922M and 923.

"2. It was part of said conspiracy that the defendant John Jankowski, a licensed firearms dealer doing business as J & J Bait Shop, 32 Yonkers Avenue, Yonkers, New York, unlawfully, wilfully and knowingly would make false entries in, fail to make appropriate entries in, and fail to properly maintain the Federal firearms record, a record of the names of purchasers of firearms which the defendant John Jankowski was required to keep pursuant to Title 18, United States Code, Section 923, and the regulations promulgated thereunder (hereinafter referred to as the log book), in violation of Title 18, United States Code, Section 922M.

"3. It was further a part of said conspiracy that the defendants Frank Grady and John Jankowski would and did cause to be entered in the log book as the purchasers of .30 caliber semi-automatic rifles the names of

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persons who had not in fact purchased said rifles.

"4. It was further a part of said conspiracy that the defendant Frank Grady would issue to each person whose name was entered in the log book as described above a document which indicated that each such person had transferred to a third party the .30 caliber semi-automatic rifles shown in the log book as purchased by him.

"Overt Acts. In furtherance of said conspiracy and to affect the objects thereof, the following overt acts were committed in the Southern District of New York."

I will read the overt acts in just a moment.

The first count in this indictment charges both defendants with conspiracy in violation of Title 18, United States Code, Section 371. Now, you don't have to remember any of these Section numbers which I am about to mention to you. It is sufficient if you understand what those particular statutes from which I am going to read require or forbid.

Now, Section 371 of Title 18 provides as follows:

"If two or more persons conspire, either to commit any offense against the United States or to defraud the United States or any agency thereof in any manner or for any purpose, and one or more of such persons do an act to affect the object of the conspiracy, each shall be

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guilty of a crime."

Essentially the first count charges that Frank Grady, together with John Jankowski and others, formed a conspiracy or criminal agreement to falsify firearms records which Federal law required Mr. Jankowski as a licensed gun dealer to keep. A conspiracy to commit a crime is a separate offense, distinct and apart from the substantive crimes the conspiracy was formed to accomplish. Thus the crime of conspiracy to falsify firearms records is different from what I will call the substantive crime of falsifying firearms records. Even though many of the same acts may relate to both. Conspiracy focuses on the danger to the public of an agreement or plan by two or more people to violate the law, whereas the substantive crime focuses on the carrying out of that agreement.

Both of the defendants are charged under Count 1, and it is important for you to consider the evidence separately as to each defendant. In order for you to find a defendant guilty of the crime of conspiracy charged in the first count of the indictment, the Government must prove to your satisfaction beyond a reasonable doubt the following elements, and I am giving you the elements of the crime of conspiracy:

First, that during sometime from January 1970

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up to the filing of the indictment on March 8, 1976, a conspiracy or agreement existed and that it was part of the conspiracy or agreement that the defendants and their co-conspirators would violate Sections 922M and 923 of Title 18 of the United States Code, which I will read to you later on.

As I have already pointed out to you, the conspiracy charge is an entirely separate and distinct crime from the crime which was the object of the conspiracy. This fact, however, does not prevent you from considering proof of an actual violation as evidence that a conspiracy existed which had the purpose of achieving ends which would constitute such a violation.

Since the indictment also charges that the defendants committed such actual or substantive violations, I shall not summarize them for you at this time except to state that you must find in essence that it was a purpose of the conspiracy that the defendant whose case you are considering and one or more co-conspirators would make false entries in, fail to make appropriate entries in, or would fail to properly maintain the Federal firearms record, a record of the names of transferees of firearms which the defendant John Jankowski was required to keep.

The second element, that the particular defendant

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whose case you are then considering knowingly and wilfully associated himself with the conspiracy; that is to say that he became a member.

The third element, that one of the members of the conspiracy committed at least one of the overt acts listed in the indictment at or about the time and place alleged in the Southern District of New York.

If the Government fails to establish each essential element beyond a reasonable doubt as to a particular defendant, you must acquit that defendant of Count 1. If it succeeds, then your duty is to convict him of that count.

Remember also that you must consider each defendant separately and that in order to convict the Government must prove each element as to the particular defendant whom you are considering beyond a reasonable doubt.

Now, I will go over these elements one at a time. The first element is that a conspiracy existed. The gist of the crime of conspiracy is the unlawful combination or agreement to do an act which is in violation of the law. Whether or not the defendants accomplished what it is alleged they conspired to do is immaterial to the question of guilt or innocence with respect to Count 1. Conspiracy has often been called a partnership for criminal purposes

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in which each member becomes the agent of every other member. To establish a conspiracy the Government is not required to show two or more people sat down around a table and entered into a solemn compact, orally or in writing, stating that they had formed a conspiracy to do an act which is in violation of the law, setting forth details of the plan, the means by which the project is to be carried out or the part to be played by each conspirator. Indeed it would be extraordinary if there were ever such a formal document or specific oral agreement. Your common sense will tell you that when people in fact undertake to enter into a criminal conspiracy, much is left to the unexpressed understandings. Conspirators don't usually reduce their agreements to writing or acknowledge them before a notary public or publicly announce their plans.

From its very nature a conspiracy is almost invariably secret, in its origin and in its execution.

It is sufficient for the purpose of this element if two or more persons in any manner, through any contrivance, impliedly or tacitly, come to an understanding to violate the law together. Express language or specific words are not required to indicate assent to attachment to a conspiracy, nor is it required that you find all of the claimed co-conspirators alleged in the indictment joined

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in the conspiracy in order to find that a conspiracy existed. You need only find that one of the defendants or co-conspirators entered into an unlawful agreement with one or more other persons in order to find that a conspiracy existed.

In determining whether there has been an unlawful agreement you may judge acts and conduct of the alleged co-conspirators which are done to carry out an apparent criminal purpose. The adage that actions speak louder than words is applicable here, and often the only evidence available is that of disconnected acts which, however, when taken together in connection with each other may show a conspiracy to secure a particular result just as satisfactorily and conclusively as more direct proof.

The offense is complete when the agreement is made to do any act in violation of the law and any single act to affect the object of a conspiracy is thereafter committed by at least one of the co-conspirators.

In determining whether the conspiracy charged in this indictment actually existed you may consider the evidence of the acts or the conduct of the alleged conspirators as a whole and the reasonable inferences to be drawn from such evidence. If upon such consideration of the evidence you find beyond a reasonable doubt that the

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minds of at least two of the alleged conspirators met in an understanding way that they have agreed, as I have explained to you, to work together in furtherance of the unlawful scheme alleged in the indictment, then proof of the existence of the conspiracy, that is to say the first element of the crime, is complete.

Now, if you do conclude that a conspiracy as charged existed, then you will consider the second element of the crime, and you must determine whether the defendant whose case you are then considering participated in the conspiracy with knowledge of its unlawful purposes and in furtherance of its unlawful objectives. To find a defendant's membership in a conspiracy you must find that he knowingly and intentionally participated therein. Thus, mere knowledge by a defendant of the existence of a conspiracy or of any illegal act on the part of an alleged co-conspirator or mere association with one or more co-conspirators or mere unwitting participation or facilitation is not sufficient to establish membership in the conspiracy. The Government must establish beyond a reasonable doubt that the defendant whose case you are then considering was aware of its basic purposes and objects and that he entered into the conspiracy with a specific criminal intent; that is, in this case with a purpose to

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falsify the records of the J & J Bait Shop.

Now, let me caution you that you do not have to find before you consider a defendant a member of the conspiracy that he knew that the basic purposes and objects of the conspiracy constituted a violation of Federal law, nor do you have to find that the acts which constituted his participation in the conspiracy were themselves substantive violations of law. So if the defendant with understanding of the unlawful character of the conspiracy intentionally engages in, advises or assists the undertaking for the purpose of furthering it, making it something he wishes to succeed, he thereby becomes a knowing and wilful participant or member and a co-conspirator.

Knowledge is a matter of inference from facts proved. It is not necessary that a defendant be fully informed as to all the details or the scope of the conspiracy. He need not know all of its activities and actors, but I do want to caution you that mere association with one or more co-conspirators does not make one a member of the conspiracy, nor is knowledge without participation sufficient. What is necessary is that the defendant whose case you are considering participated with knowledge of at least some of the purposes of the conspiracy and with intent to aid in the accomplishment of those unlawful ends.

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The guilt of a conspirator is not governed by the extent or duration of his participation in the conspiracy. Even if one joined the conspiracy after it was formed and was engaged in it for a more limited degree or a lesser period of time than other co-conspirators, he is equally culpable so long as he was a co-conspirator. Each member of a conspiracy may perform separate and distinct acts at different times in different places, and some conspirators may play major roles while others have only minor parts.

The question is did a defendant join one or more others in a conspiracy as charged in the indictment with awareness of its basic illegal purposes and aims? If so, then the law treats him as a full member of the conspiracy.

A conspiracy, once shown to have been formed, may be considered by the jury, if you so find on the evidence, to have continued until its objective is accomplished or until there was an affirmative act of termination by its members, or until its existence is discovered by the authorities. Once a person is found to be a member of a conspiracy you may infer that he continued his membership until its termination, unless there is evidence of withdrawal or disassociation. These questions, however, are fact questions. They are matters solely for the

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jury's determination.

Now, when people enter into a conspiracy to accomplish an unlawful purpose, they become agents for one another in carrying out the conspiracy. Therefore, the acts or declarations of one member of the conspiracy made during the existence and in the course of the conspiracy and in furtherance of the common purpose of the conspiracy are deemed to be the acts of all and all are responsible for such acts.

Accordingly, if you find in accordance with these instructions that the alleged conspiracy existed and that the defendant whose case you are then considering and one or more other persons were co-conspirators, were participants in it, then acts done and statements and declarations made in furtherance of the conspiracy by the persons found by you to have been members of the conspiracy, may be considered by you against the defendant whom you find was a member even though such acts or declarations were made outside of his presence and without his knowledge.

Now, it is very important, members of the jury, to note that this principle applies only to the acts and declarations done or made during the continuance of the conspiracy by a conspirator and in furtherance thereof;

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that is, to carry out the unlawful objective or purpose of the conspiracy. It does not apply to any acts or declarations which do not have these characteristics. So in considering statements made or acts done at a time when the record shows that a particular defendant was not present, before you may consider such evidence against the absent defendant you must determine whether the acts or declarations were made during the continuance of the conspiracy and in furtherance thereof by a member of the conspiracy.

Now, there is certain testimony which I specifically directed you may not consider as to a particular defendant, and those directions which I made still do apply. You are to adhere to those. But as to other situations where evidence was taken and the jury was informed that it was taken subject to a motion, as to those you are to determine, before you can give that any weight as to the non-present defendant, you must make those determinations I have just mentioned. If you don't find that the acts or declarations had those characteristics I just mentioned, then you cannot consider them as to the absent defendant.

Now, in determining whether a particular defendant was a member of the conspiracy, the jury must consider only his acts or statements. He cannot be bound

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by the acts or declarations of other participants until it is first established that the conspiracy which is charged existed and that he was one of its members. But once you have established those two matters to your satisfaction beyond a reasonable doubt, then you may consider the acts and declarations of the other conspirators done during the continuance of the conspiracy in furtherance thereof in respect to a defendant whether or not he was present.

Assuming, first, that you have found that the alleged conspiracy existed, and, second, that as to the defendant whose case is then being considered by you that he was a member of the conspiracy, then you must consider whether the Government has proved beyond a reasonable doubt the third element, and that is, the commission of an overt act in furtherance of the conspiracy and in the Southern District of New York.

An overt act is any step, action or conduct which is taken to achieve or accomplish or further the objective of the conspiracy. The purpose of requiring proof of an overt act is that parties might conspire and agree together to do an act which violates the law. After they reach that agreement they might change their minds, do nothing about it to carry it into effect. In that case it would be only talk. It would not constitute a crime.

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So it is an essential element of the crime of conspiracy that an overt act must be committed by a conspirator during the existence of a conspiracy and in furtherance thereof. But the overt act need not be a criminal act nor need it be the crime which is the object of the conspiracy.

Now, I am going to read the overt acts from the indictment.

"In furtherance of said conspiracy and to affect the objects thereof the following overt acts were committed in the Southern District of New York:

"1. On or about May 4, 1970, and on or about May 7, 1970, the defendant Frank Grady entered his name upon the log book of J & J Bait Shop, 32 Yonkers Avenue, Yonkers, New York, as the purchaser of two .30 caliber semi-automatic rifles, 17228, 173209, respectively.

"2. On or about May 6, 1970, the defendants Frank Grady and John Jankowski caused a person to enter his name in the log book at J & J Bait Shop, 32 Yonkers Avenue, Yonkers, New York, as the purchaser of two .30 caliber semi-automatic rifles, numbers 169173 and 167659, respectively, when in fact such a person was not the true purchaser.

"3. On or about May 6, 1970, the defendants Frank Grady and John Jankowski caused a person to enter

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his name in the log book at J & J Bait Shop, 32 Yonkers Avenue, Yonkers, New York, as the purchaser of two .30 caliber semi-automatic rifles, Numbers 170426 and 172767, respectively, when in fact such person was not the true purchaser.

"4. On or about May 6, 1970, the defendants Frank Grady and John Jankowski caused a person to enter his name in the log book at J & J Bait Shop, 32 Yonkers Avenue, Yonkers, New York, as the purchaser of two .30 caliber semi-automatic rifles, Numbers 168111 and 167661, respectively, when in fact such person was not the true purchaser.

"5. On or about May 7, 1970, and on or about July 21, 1970, the defendants Frank Grady and John Jankowski caused a person to enter his name in the log book at J & J Bait Shop, 32 Yonkers Avenue, Yonkers, New York, as the purchaser of two .30 caliber semi-automatic rifles, Numbers 171189 and 171776, respectively, when in fact such person was not the true purchaser.

"6. On or about May 7, 1970, John Jankowski, the defendant, entered his name in the log book at J & J Bait Shop, 32 Yonkers Avenue, Yonkers, New York, as the purchaser of one .30 caliber semi-automatic rifle Number 172315."

It is not necessary for the Government to prove

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that each member of the conspiracy committed or participated in any particular overt act. Since the act of any one done in furtherance of the conspiracy becomes the act of any other member. Also the Government is not required prove each of the overt acts as alleged in the indictment. It is sufficient for Count 1 if it proves the commission of at least one of the acts in the Southern District of New York, which includes Manhattan, the Bronx, and Yonkers, New York, at or about the time alleged. The overt act need not have occurred at the precise time or place alleged in the indictment.

While the indictment charges that the conspiracy existed from on or about January 1970 and continuously thereafter up to and including the date of the filing of the indictment, that is, March 8, 1976, it is not essential that the Government prove that the conspiracy started and ended on or about those specific dates. It is sufficient if you find that in fact the conspiracy charged was formed and existed for some time within the period set forth in the indictment, and that at least one of the overt acts was committed in furtherance thereof within that time period.

As I mentioned to you before, however, any such conspiracy, if there was one, ended when it was dis-

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covered, which the jury could find happened when Agent Quinn of the Alcohol, Tobacco and Firearms Division of the United States Treasury went to Jankowski's store in 1973.

Now, I will now read certain of the counts having numbers between 2 and 17, which for convenience I will call the substantive false records counts. I am just using that name as a matter of convenience to shorten my discussion with you. I instruct you at this time that the counts originally numbered 9, 10, 11, 12, 13, 14 and 18 are no longer before you for your consideration. Thus, you may not consider any charges as to those specific counts. You should not speculate as to why those counts are no longer open. The only counts which you need consider are Counts 2, 3, 4, 5, 6, 7, 8, 15, 16 and 17. In doing so you cannot draw any adverse inference whatsoever against any defendant concerning any counts which are no longer before the Court and jury.

I will now read those counts.

"The Grand Jury further charges on or about the dates hereinafter set forth in the Southern District of New York John Jankowski, who at all times relevant to this indictment was a licensed dealer in firearms doing business as J & J Bait Shop, 32 Yonkers Avenue, Yonkers, New York, and Frank Grady, the defendants, unlawfully, wilfully and

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knowingly did make and caused to be made false entries on records which the defendant John Jankowski was required to keep pursuant to Section 923 of Title 18, United States Code, and regulations promulgated thereunder, to wit, the Federal firearms record, and did fail and cause to fail to make appropriate entries in and to maintain said record with respect to the transfer of the firearms hereinafter identified in Counts 2 through 18.

"Count 2. May 6, 1970, Universal Firearms Corporation .30 caliber semi-automatic rifle, Serial No. 169173.

"Count 3. May 6, 1970, No. 167659.

"Count 4. May 6, 1970, No. 170426.

"Count 5. May 6, 1970, No. 168111.

"Count 6. May 7, 1970, No. 171189.

"Count 7. May 8, 1970, No. 172767.

"Count 8. May 8, 1970, No. 167661.

"Count 15. July 21, 1970, No. 171776.

"Count 16. July 22, 1970, No. 169603.

"Count 17. July 22, 1970, No. 170891."

Now, each defendant is charged in these counts with having violated Title 18, Section 922M, which reads as follows:

"It shall be unlawful for any licensed dealer to

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make any false entry in, to fail to make an appropriate entry in, or to fail to properly maintain any record which he is required to keep pursuant to Section 923 of this Chapter and the regulations promulgated thereunder."

Now, Section 923 which I just mentioned states in Subsection G:

"Each licensed dealer shall maintain such records of sale or other disposition of firearms at such place, for such period and in such form as the Secretary of the Treasury may by regulations prescribe."

I further instruct you that under the authority granted him in Section 923G, the Secretary of the Treasury has prescribed the following regulation for the keeping of records. That regulation has the force of law. It is found under No. 27 CFR 178.125E. It provides:

"Each licensed dealer shall enter into a permanent record of each receipt and disposition of firearms. The record shall show the date of the sale or disposition of each firearm, the name of the person to whom the firearm is transferred, and the address of the person to whom transferred."

I would like to instruct you as to the definition of the word firearm, which is a word you have heard throughout the trial. When we use it in the context of this

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trial we are talking about the particular type of firearm, some of which have been received in evidence here. The statute provides that the term firearm means "Any weapon which will or is designed to or may readily be converted to expel a projectile by the action of an explosive."

Now, in determining whether these particular firearms which have been mentioned in this case were firearms, you need not rely solely on the testimony of Gunnar Erickson, but you may. You have a right to examine the firearms in the jury room and to consider all of the relevant testimony in the case. You may consider whether they were new when purchased, you may consider the invoice from Roskin Brothers, you may look them over yourselves, and you may, on all the evidence before you, consider whether they were firearms, whether they were weapons in the sense of the statute in that they were deisqned to or may readily be converted to expel a projectile by the action of an explosive.

I will speak about Mr. Jankowski first in connection with the so-called substantive fales entry counts. In order to find the defendant John Jankowski guilty of any of the offenses charged in Counts 2 through 8 and Counts 15, 16, and 17, you must find as to that particular count you are considering that the following elements have been proved beyond a reasonable doubt, and these are the elements:

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First, the defendant John Jankowski was a licensed dealer.

Second, on or about the time and place charged in the particular count you are then considering, the defendant John Jankowski made or caused to be made a false entry or failed to make an appropriate entry in or failed to properly maintain Government Exhibit 9, which is the Federal firearms record.

The third element is that he did so unlawfully, wilfully and knowingly.

The Gun Control Act of 1968 was passed by the Congress of the United States to help the Government locate and check upon the transferees of firearms. Here in this case the defendants Grady and Jankowski claimed that the records which defendant Jankowski was required to keep, that is Exhibit 9, recorded the true name and address of the persons who signed the book and that consequently the Government was not deprived of true information.

On the other hand, the Government's position is that the acts of entering true names and addresses were the means allegedly used to deprive the Government of what it contends is the true information; that is, that in fact Defendant Grady and individuals other than the persons listed in the records were the persons to whom

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defendant Jankowski sold or delivered and transferred the firearms identified in the indictment; that defendants Grady and Jankowski engaged in a subterfuge by causing other persons to be listed as the persons to whom the firearms were sold or delivered; and that this practice was calculated to impede the Government in its right to control and check on transfers of firearms.

In this connection you must consider the totality of the circumstances in this case. You may use your common sense, and you are not required to look at individual transactions in isolation. In considering whether it is possible to make a false entry in a Federal firearms record by recording the true name, address, Social Security number, the date of birth of a person next to the serial number for the particular M-1 carbine, you may consider that activity in connection with the contention that papers were then issued to the persons who were then listed in the log book which indicated each person had transferred his firearm to a third party at a date subsequent to purchase, and also the statement attributed to a member of the conspiracy to the effect that those persons were deceased. In other words, the entry of true names could be regarded by the jury as falsification if it was part of the scheme to obfuscate and conceal the chain of possession or the

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travels from person to person which a particular numbered firearm takes between the time it is manufactured and the time that it passes from the wholesaler to the retailer to the purchaser and then to subsequent purchasers, until it reaches some point in time someplace where the Government desires to knows who owns it or how it reached such place.

In this regard it is crucial to the Government's case for Mr. Jankowski to have known of the intention of the purchasers to obfuscate the firearms records, that he did in fact know it, and that being aware of the basic purpose of the alleged scheme he agreed, either tacitly or expressly, that false entries be made in his records.

If Jankowski did not know that the names recorded were not those of the true transferees as required by the statute and regulations as I have just read, he must be acquitted on those false record substantive counts; that is to say, numbers 2 through 17, 2 through 8 and 15, 16 and 17. And so also Mr. Grady, as to those particular counts, for reasons which I will explain to you later.

Please keep the counts separate in your mind. Different rules apply to Count 1 and Count 19 than the rules which apply to Counts 2 through 8 and 15, 16 and 17.

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Now, the enforcement of the Gun Control Act of 1968 which the defendants are charged with violating in the substantive counts, is an important part of the Federal policy established by Congress. It is your duty under the oath you have taken to decide this case on the facts as you find them in accordance with the law. It makes no difference whether you approve or disapprove of the Gun Control Act or the way it is enforced, and whether you think it is unfair or whether you think the law should be different.

The Gun Control Act is designed to serve several functions, including deterring or preventing individuals intending to act unlawfully with respect to guns by requiring them to reveal their identification, and providing law enforcement officials with information as to the ownership of guns, and to facilitate investigation.

Even if you believe that the Gun Control Act is a bad law or that it doesn't serve the purposes for which it was intended, or you think that Congress should repeal it or change it, this would not justify an act in violation of that law.

If the evidence shows beyond a reasonable doubt that any defendant in this trial committed any of the crimes charged against him in any particular count, it is

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your duty to convict.

If the evidence does not warrant the conclusion that he is guilty beyond a reasonable doubt, then it is your duty to acquit him.

As to the first element of these counts 2 through 8 and 15, 16 and 17, Mr. John Jankowski has himself testified that he was a licensed dealer in firearms at the time of the alleged commission of these offenses.

As to the second element, if you find beyond a reasonable doubt that John Jankowski caused or allowed to be made a false entry in or failed to make an appropriate entry in, or failed to properly maintain Government's Exhibit 9, the Federal firearms record, then you will find that the second element of these counts is satisfied.

You must make a separate determination as to each of the counts which have been charged in the indictment and which remain open for your consideration at this time.

If you find beyond a reasonable doubt that John Jankowski made or allowed false entries or failed to make appropriate, that is to say, truthful entries, or failed to properly maintain these records as to some of these counts but not as to others, then you will find that the second element is satisfied as to those counts where there

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were false entries or failure to make truthful entries.

As to any counts where you have not found false entries or a failure to keep a proper record, you must find that the second element is not satisfied, and you therefore must acquit the defendant John Jankowski on that count or counts.

You may treat an entry as false only if you find that it was an intentional subterfuge to have the effect of covering up the devolution or ownership of the weapon so that the trail would get lost by reason of the transfer of it to a deceased person or by reason of the spreading around of the number of guns among a number of names.

The entry would not be false unless at the time the entry was made the person signing the book was not regarded by Jankowski and Grady as the true transferee of the weapon but, rather, as a person signing a line or lines in the book solely to act as a front or coverup for guns which were intended to be transferred or delivered to someone else.

You may consider in this regard whether the person whose name was entered into the book paid for the gun; whether he ever possessed it or selected it or did any of those acts which your common sense will tell you will be the ordinary normal acts of a person making a good faith

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purchase of one or two rifles from a sporting goods store.

Here again, you can and should consider the totality of the facts as developed in the evidence.

Even if you find that the Government has proved the existence of the first two elements as to the particular substantive falsification count which you are considering, you may not find the defendant John Jankowski guilty on that particular count unless you also find a third element, that is that he acted unlawfully, wilfully and knowingly. Also, you must make a separate determination as to the existence or non-existence of this third element on each of the substantive counts which remains in front of you for your consideration.

These words, unlawfully, wilfully, and knowingly are important words. The question is, what do they mean? Let me tell you first what they do not mean: They do not mean the Government has to show that the defendant knew he was breaking a particular law before he can be convicted of the crime. They don't mean that the Covernment has to show that a defendant intended to profit at the expense of any other person, nor do they have anything to do with the defendant's personal or private reasons for violating a statute, for if after considering all the evidence in accordance with my instructions to you, you come to the

conclusion that t' defendant whose case you are then considering, violated the statute and did so knowingly and wilfully, then, in that event, his personal or private reasons for violating the statute are of no consequence as far as his guilt is concerned.

I instruct you that the words unlawfully, knowingly, and wilfully mean deliberately; intentionally. In other words, you must be satisfied beyond a reasonable doubt that the defendant whose case you are considering acted with knowledge, consciously and with the free exercise of his will.

The word "knowingly" and "wilfully" are opposed to the idea of inadvertent or accidental occurrence. An act is done knowingly if it is done voluntarily and purposely, and not because of mistake, accident, mere negligence or other innocent reasons.

An act is done wilfully, if it is done knowingly and deliberately. Wilful does not mean that the defendant, in addition to knowing what he was doing must also suppose he was breaking the law. It is not necessary that the defendant know he is violating any particular statute. Rather, it is sufficient if you are convinced beyond a reasonable doubt that he was aware of the general unlawful nature of his act.

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Knowledge and intent, members of the jury, exist in the mind. We can't look into one man's mind to see what went on. The only way you have for arriving at a decision of these questions is to take into consideration all the facts and circumstances shown by the evidence and to determine from such facts and circumstances whether the requisite knowledge and intent were present at the time in question.

Direct proof is unnecessary. Knowledge and intent may be inferred from all of the surrounding circumstances.

Now, I am going to talk about Mr. Grady with respect to Counts 2 through 8 and 15, 16 and 17.

In order to find the defendant Frank Grady guilty of the offenses charged in those counts, you must find beyond a reasonable doubt with respect to each of these counts :

First, that the Government has proven beyond a reasonable doubt each of the elements I just mentioned, which are necessary for you to find the defendant John Jankowski guilty of that particular count.

Second, that the Government has proven beyond a reasonable doubt that the defendant Frank Grady aided or abetted the defendant John Jankowski in committing the

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offense charged in that particular count. Mr. Grady was not a licensed dealer in firearms, and accordingly the Government is not contending nor can it contend that he had a duty to maintain proper records for the J & J Bait Shop.

However, Section 2 of Title 18 of the United States Code provides that whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal.

Thus in order for you to find the defendant Frank Grady guilty on any of these counts between the numbers of 2 and 17 inclusive, it is not necessary for you to find that he actually performed every act alleged in these counts. What is required, however, is that the Government prove beyond a reasonable doubt all three of the elements as against Mr. Jankowski and that Mr. Grady aided and abetted the commission of the specific offense charged in a count by Mr. Jankowski.

Once again I remind you, you must consider each of these so-called substantive falsification counts separately because each is a separate and distinct crime.

What does it mean to aid and abet in the commission of an offense? A person who shares in another

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person's criminal purposes and encourages and assists the other to carry out that purpose makes himself an aider and abettor and is punishable under the law as a principal. There is no precise rule as to what acts a defendant must perform in order to constitute himself an aider or abettor in the crime of another person. It is enough if a defendant in some manner associated himself with the illegal venture, participated in it as something that he wished to bring about, or that he sought by his actions to make it succeed, and had a stake in the outcome.

Even a small degree of concert or collusion of that sort will be sufficient. The assistance given need not contribute to the criminal result to the degree that the occurrence of the act depended upon such assistance. It is sufficient if the assistance facilitates or encourages a result that would have taken place without it.

Therefore, in order to find that the defendant Frank Grady aided and abetted the commission of any of these offenses you must find beyond a reasonable doubt that he associated himself with the venture, that he participated in it as something he wished to bring about, that he sought by his action to make it succeed.

Once again I should remind you that you may not find Mr. Grady guilty of aiding and abetting unless

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you find beyond a reasonable doubt the existence of all three elements of the particular offense which you are considering against Mr. Jankowski and also that Mr. Grady knowingly and wilfully aided and abetted the commission by Mr. Jankowski in the sense that I have just explained.

If you find that Mr. Jankowski did not act knowingly and wilfully in the sense which I have explained, then you must acquit Mr. Grady on the particular substantive offense which you are considering.

The law is clear that specific criminal intent must be shown in the mind of both the alleged principals on those counts, and the alleged aider or abettor, here Mr. Grady, beyond a reasonable doubt before you can convict Mr. Grady as the aider and abettor on these particular counts that I have just mentioned.

When I use these words "specific criminal intent," I mean specific intention to do an act which violates the statute. It is not necessary that a defendant know the particular law which he is violating and it is not necessary for the Government to show that he has read the statute, or has any actual familiarity with the rules themselves. But he must intend to do the act itself which the law forbids.

Conversely, on the conspiracy count, or Count 1,

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as the sending or taking out of the United States in any manner any article or equipment on the United States Munitions List.

As to the second element, I instruct you that semi-automatic .30 caliber rifles are designated on the United States Munititions list.

If you find beyond a reasonable doubt that the guns which Mr. Grady allegedly exported were .30 caliber semi-automatic rifles, the numbers of which are mentioned in the indictment, then the second element of this count will have been proven.

As to the definition of those guns, the definition of firearm is the same as that which I have read to you before in connection with prior counts and as to the caliber of the firearm, you may consider the testimony of Mr. Gunnar Erickson or the invoices which are Exhibits 1 and 2.

As to the third element, there is evidence, specifically Government's Exhibits 5 and 6, from which the Jury might conclude Mr. Grady did not have either a license to export or written approval to export, from the Department of State, or an exemption from these requirements. If you find beyond a reasonable doubt that Mr. Grady had no license or written approval or exemption

from the United States substantially all of the firearms listed in Count 19 of the indictment;

Second, that such firearms were on the United States Munitions List;

And third, that Mr. Grady exported these firearms without first having obtained a license therefor or written approval therefor from the Department of State or an exemption from those requirements;

And fourth, that in doing so, Mr. Grady acted unlawfully, wilfully and knowingly.

As to the first element, the Government does not contend that Mr. Grady personally put these firearms on a ship or airplane. Rather, it is charged that Mr. Grady aided and abetted their export by others.

I have already discussed aiding and abetting with you with respect to other counts and I instruct you that you are to apply the same principles here. Thus, Mr. Grady can only be found guilty of aiding and abetting the crime of illegal export if he willingly associated himself with the illegal export in any way and wilfully participated in it, knowingly and intentionally as something he wished to bring about; that is, to make it succeed.

In connection with this first element, I have used the word "export." That word "export" is defined

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you could find that Jankowski conspired with somebody other than Grady, that is to say, possibly O'Brien or Casey or any of the other persons who have been referred to in the trial as alleged co-conspirators, but not with Grady, and in that case you could convict Mr. Jankowski of Count 1 and acquit Grady. Similarly, you might find that Mr. Grady conspired with Mr. O'Brien or Mr. Casey or persons other than Mr. Jankowski, and in that case, you could convict Mr. Grady of Count 1, and acquit Mr. Jankowski.

It is not necessary to the Government's theory in this case to show that Grady and Jankowski conspired with each other; it is sufficient if the conspiracy existed and the defendant whose case you are then considering became a member knowingly and wilfully and that an overt act took place. But on those counts numbered between 2 and 18 the rule is otherwise, and unless Mr. Jankowski is guilty with respect to a count within that grouping in the indictment, Mr. Grady must be acquitted.

Finally, I come to the last count, the so-called exporting count, Count 19. This count relates only to Mr. Grady. I will read it to you.

"The Grand Jury further charges that during the period between May 1, 1970 to the date of filing of this indictment in the Southern District of New York and

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elsewhere, the defendant Frank Grady unlawfully, wilfully and knowingly did export from the United States the firearms on the United States munitions list hereinafter identified. without first having obtained a license therefor or written approval therefor from the Department of State for an exemption of such requirement.

There is a list of firearms, Universal Firearms Corporation, .30 caliber semi-automatic rifle No. 169171; No. 167659; No. 168111; No. 171189; No. 167661; No. 171900; No. 170094; No. 166438; No. 170633; and No. 172218.

Basically, Count 19 charges Mr. Grady with a violation of the following regulation issued by the Secretary of State of the United States; that regulation has the force of law:

"It shall be unlawful for any person to export or attempt to export from the United States any of those articles on the United States Munitions List without first having obtained a license therefor unlesss written approval was obtained from the Department of State or an exemption from this requirement is authorized."

In order to find the defendant Grady guilty of Count 19, the jury must be satisfied beyond a reasonable doubt as to these following elements:

First,that Grady, along with others, exported

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for any reason to find a verdict of not guilty . But, on the other hand, if you should find that the law has been violated as charged by any defendant as to any count, you should not hesitate because of sympathy or any other reason to render a verdict of guilty, as a clear warning that crime may not be committed with impunity.

The public is entitled to be assured of this.

If the jury finds as to any particular defendant beyond a reasonable doubt that the Government has proved of the elements of any particular count in this indictment it is of no concern to the jury what the motive for the violation might have been. The Government is not required to prove the motive for any crime, although it may do so, and it is of no significance to the jury what the motive is. Even if the motive for a violation of law should turn out to be an unselfish one, and even if the defendant believes he was acting in performance of a higher duty or obligation or desiring to help someone else who is believed to be in need of his assistance, such as the oppressed people in Northern Ireland, such a motive, however highly you may regard it, does not justify the commission of a Federal crime.

A word about the deliberating. Each juror is entitled to his or her own opinion. Each of you should

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exchange your views with your fellow jurors. That is the purpose of jury deliberations. To discuss and consider the evidence, to listen to the arguments of the other jurors, to present your individual views and to consult with one another; to do so politely and patiently, and to reach a verdict based solely and wholly on the evidence, if you can do so without violence to your own individual judgment.

But each one of you must decide this case for himself or herself after consideration with your fellow jurors. If, after carefully weighing all the evidence and listening to the arguments of your fellow jurors, you entertain a conscientious view that differs from the rest, you are not to yield your judgment simply because you are outnumbered or outweighed. For each of you your final vote must reflect your individual conscientious judgment as to how the case should be decided.

In order to find a verdict on any count, it must be a unanimous verdict. That is to say, all jurors must agree. When the verdict is taken the jury will be asked to state the verdict separately as to each count to the defendant or defendants named therein.

While you are deliberating you may desire to have some part of the testimony read to you. If that is so, please be very precise to what you'd like to have read

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and I will direct that it be done.

You may find that you want to see some of the exhibits. If so, please send out a note asking for what you would like to have. Maybe there might be some uncertainty as to the meaning of some of the Court's instructions. If that is so, please send out a question which will clear up any difficulty you may have.

All those notes must be sent out by the Forelady, Mrs. Rodriguez. And I ask you, please, in your notes not to indicate how the jury may then be divided as to any count or any defendant. The Court does not want to know that in any note. The note should merely set forth what the jury would like to have done or explained or furnished.

If you ask for a copy of the indictment, that can be sent to you, but as I told you before, an indictment is not evidence. All notes from the jury will come from the Forelady.

At this time would you swear in the marshals.

[At 3:03 p.m. two marshals were duly sworn.]

THE COURT: Members of the jury, I am now going to ask you to remain seated in the box for a few minutes while I confer in the other room with the attorneys to see if there are any instructions they would like to have me explain to you or anything I might have omitted in my

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statement. Please don't discuss the case among yourselves as you sit here, because it might be possible that I may have to give you additional instructions.

[In the robing room:]

THE COURT: Mr. Carey, do you have any additional requests?

MR. CAREY: I do, your Honor. I would like the Court to charge the jury using its standard charge on witnesses equally available to each side.

THE COURT: I don't think that is necessary in view of the comment that I made at the time the objections were made. I decline to do so.

MR. CAREY: The Government would also like the Court to charge the jury the Government need not prove the firearms were operable.

THE COURT: I believe I covered what the definition of a firearm was. I read them the statute. I decline to go further into that unless they ask a question about it.

MR. CAREY: The Government requests the Court to charge the jury they might consider the success of the conspiracy as evidence of the object of the conspiracy, in the form that the Government has submitted it in Request No. 4.

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THE COURT: I decline to so charge.

MR. CAREY: The Government requests the Court to charge that the jury may consider the evidence which has been introduced in this trial relative to Count 1 which have been dismissed in determining, in reaching a decision on the counts which have not been dismissed.

THE COURT: I decline to so charge. Although certainly all exhibits and testimony which have not been stricken out are before them. They have been told that. Some of them do apply to the conspiracy.

MR. CAREY: I know, your Honor. I think there may be some confusion. I think the jury may think since these counts have been dismissed they may not consider the testimony as to those counts. The Court has stated this but I would like it emphasized because I think it has not been sufficiently emphasized, namely, that although the indictment charges in the conjunctive, if they should happen to read it they should understand that they need not find that the defendants have done all of the three things listed in the indictment, namely, they need not find the defendants both made false entries, failed to make appropriate entries, and failed to properly maintain.

THE COURT: I believe in the context of this case that should be clear. If there is any question from

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the jury I will cover that, because I think that is the law. I decline to charge it at this point.

MR. CAREY: Your Honor correctly stated it, but I think it needs some added emphasis.

THE COURT: I decline to do so.

MR. CAREY: Finally, the Government requests that the Court charge the jury on consciousness of guilt in the form similar to Government's Request No. 18, that is related to Mr. Grady's request through Mr. McMorris that he not talk.

THE COURT: I have already ruled that in the side bar conference. I decline to so charge for the reasons I stated at that time.

MR. CAREY: No further requests.

THE COURT: Do you have anything, Mr. Bruce?

MR. BRUCE: No, sir.

MR. DURKIN: I ask your Honor most respectfully to charge that in giving the charge against Grady and this particular Count No. 19 which is the export count, that they must find in order to convict that the Government have proven each and every element of the crime charged.

THE COURT: I did tell them that. I enumerated the elements and said they all have to be found. Certainly I did.

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MR. DURKAN: Included in that your Honor is No. 4. I believe you charged that if he knowingly aided and abetted Martin Lyons, it should also be charged with respect to whether or not Martin Lyons had a license.

THE COURT: I did, I believe, say unlawful export and I defined what unlawful export meant. You may have an exception to the extent that is not properly covered. I believe I did cover it.

MR. DURKAN: One other thing, your Honor. It's in the nature of a request. Your Honor was talking about if Mr. Jankowski is acquitted on the substantive counts then of necessity Mr. Grady must be acquitted as an aider and abettor. You said it I think at least twice. Counts 2 through 18. I think you meant 2 through 8 and --

THE COURT: I think I stated Numbers 2 through 18. I think it is clear to them.

MR. CAREY: I think your Honor made it clear.

MR. DURKAN: I just wanted to draw that to your Honor's attention.

THE COURT: I think it is clear to them that they can't consider any of the counts that have been dismissed. I said those numbered between 2 and 18, was the wording I did use once. It was so clumsy the other way.

MR. DURKAN: I just wanted to draw it to your

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Honor's attention.

THE COURT: I think the record is adequate on that. Anything else, gentlemen? If not, I will send them on to lunch.

MR. DURKAN: If your Honor wants exceptions now, I have a few.

THE COURT: Certainly.

MR. DURKAN: I very briefly except to your Honor's charge that the jury can examine the guns and take them into the jury room as an aid in determining whether or not they are operable.

THE COURT: You may have an exception to that but I haven't used the word operable in my discussion. I relied on the statute. I read them the statute. Since the statute is drawn in such a peculiar fashion I have not intended to try to tell them that -- I haven't tried to draw any contrasts between the word "operable" and those foolish words which Congress set forth and which have been carried over to the exporting definition also. Unless I have to deal with that, I would prefer not to do so.

I think it unfair to tell them in a case where the guns are operable, to tell the jury that they don't have to be operable. There is plenty of evidence these guns were operable, including the test made by Gunnar Erickson.

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You have an exception on that. But they don't have to be operable under this Section if they can be fixed up to fire.

MR. DURKAN: I except to that portion where your Honor charged in words or substance that the signing of a true name can indeed be false --

THE COURT: You may have an exception as to all of that. I said it could be a violation of the statute.

MR. DURKAN: That is right. And can be linked as a scheme to obfuscate the firearms record. I except to that portion. At one stage your Honor defined the entries which have been called in the statute equivalent as being truthful. I want to take exception to that in the charge.

THE COURT: I said that being appropriate was equivalent to being truthful. You may have an exception to that. I don't know what else appropriate could mean.

MR. DURKAN: I want to take exception to your use of the phrase good faith purchase.

THE COURT: I didn't use that expression. I don't believe so.

MR. DURKAN: I believe you did, your Honor. I wrote it down. A good faith purchaser, one or the other. I believe that may conjure up something in the jury's mind that is not contemplated.

THE COURT: If I used it, you have an exception.

MR. DURKAN: I respectfully except to your Honor's charge that statements were made by Grady that may tend to indicate export can be used against him.

THE COURT: As admissions.

MR. DURKAN: As admissions, specifically the statement of intent prior to the execution of any of the acts. Also, in exception to your Honor's charging the life of the conspiracy as extending to the time of July 1973 when Agent Quinn is alleged to have discovered it.

MR. HOLMAN: Is that what in fact you did charge?

THE COURT: I left that fact to the jury, but I said they could find it ended when it was discovered. I charged it to March 8th in accordance with our last night's discussion.

MR. CAREY: That's correct, your Honor.

THE COURT: But I told them if it was discovered or if it accomplished its purpose it ended because I think that is the law in this Circuit. In many cases they attempt to bring in attempts by one conspirator to cover up as probative the guilt of the co-conspirator, and we don't allow it.

MR. DURKAN: That's all, your Honor.

MR. BRUCE: If your Honor please, I would like

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the record to reflect that I join in the exceptions to the charge of the Court, in every exception as stated by co-counsel except for the exception next to last.

THE COURT: You can join with all of them. If they are any good and helpful to you, you can have them all.

[End of robing room conference.]

THE COURT: Members of the jury, except to tell you that I do appreciate your patience, I hope you are not too hungry, I have nothing else to say to you at this time. You may withdraw from the courtroom in the custody of the U. S. Marshals and enjoy your lunch. Don't talk about the case in the restaurant.

[At 3:15 p.m. the jury went to lunch.]

THE COURT: We will be in recess for approximately an hour or so. They may be able to be served quicker, in view of the hour. So please try to be back by 4:15.

[Recess.]

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[In open court - 4:45 p.m.]

THE COURT: I have a note here marked Court's Exhibit 2 for identification.

"May we have copies of all counts in the indictment? Plus, one, one catalogue cover; two, Defendant's Exhibit A; three, one of the carbines."

I wonder if counsel can get all those matters together and permit the U. S. Marshal to take it in the jury room.

MR. DURKAN: I want to lodge an exception to the giving of the carbine.

THE COURT: I regarded it as being in evidence and they have a right to look at it. So I will overrule that.

You had better take the one that the witness testifed about, I think No. 13.

MR. BRUCE: I was going to ask your Honor which one would be sent into the jury room.

THE COURT: Do you have a preference?

MR. DURKAN: The one that doesn't work.

MR. BRUCE: Obviously.

THE COURT: Don't gamble your life on whether they don't all work.

Will you gentlemen please see the Clerk and give him those matters so he may take them to the U. S. Marshal, and then would you stand by.

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FOLEY SQUARE, NEW YORK, N.Y. - 791-1020

(At 4:50 P. M. a note was received.)

THE COURT: Gentlemen, I understand there is some difficulty with respect to a copy of the indictment. What is the problem?

MR. HOLMAN: Your Honor, it ought to be redacted to reflect the judgment of acquittal ordered by your Honor with respect to counts -- whatever they are.

THE COURT: Well, what do you want to do? Do you want us to take scissors to it, do you want me to tell the jury an hour to retype it? What is your problem?

MR. HOLMAN: The government has a proposal.

MR. CAREY: Your Honor, the government agrees to provide them with a Xerox copy of the indictment which doesn't include those counts on which your Honor has granted the defendants acquittal.

THE COURT: If that is done, is that satisfactory?

MR. DURKAN: Yes, your Honor.

MR. BRUCE: Satisfactory, your Honor.

THE COURT: Will you please do that as quickly as you can? The rest of the exhibits I will send them and tell the marshal the indictment is coming shortly.

(Recess.)

(At 5:50 P. M. a note was received from the jury.)

(In the courtroom in the presence of the jury.)

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THE CLERK: Madam Forelady, have you agreed upon a verdict?

THE FORELADY: Yes.

THE CLERK: What is your verdict as to the defendant Mr. Grady on count 1?

THE FORELADY: Guilty.

THE CLERK: Count 2?

THE FORELADY: Guilty.

THE CLERK: Count 3?

THE FORELADY: Guilty.

THE CLERK: Count 4?

THE FORELADY: Guilty.

THE CLERK: Count 5?

THE FORELADY: Guilty.

THE CLERK: Count 6?

THE FORELADY: Guilty.

THE CLERK: Count 7?

THE FORELADY: Guilty.

THE CLERK: Count 8?

THE FORELADY: Guilty.

THE CLERK: Count 15?

THE FORELADY: Guilty.

THE CLERK: Count 16?

THE FORELADY: Guilty.

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THE CLERK: Count 17?

THE FORELADY: Guilty.

THE CLERK: Count 19?

THE FORELADY: Guilty.

THE CLERK: What is your verdict as to Mr. Jankowski on count 1?

THE FORELADY: Guilty.

THE CLERK: Count 2?

THE FORELADY: Guilty.

THE CLERK: Count 3?

THE FORELADY: Guilty.

THE CLERK: Count 4?

THE FORELADY: Guilty.

THE CLERK: Count 5?

THE FORELADY: Guilty.

THE CLERK: Count 6?

THE FORELADY: Guilty.

THE CLERK: Count 7?

THE FORELADY: Guilty.

THE CLERK: Count 8?

THE FORELADY: Guilty.

THE CLERK: Count 15?

THE FORELADY: Guilty.

THE CLERK: Count 16?

SOUTHERN D...RICT COURT REPORTERS U.S. COURTHOUSE

THE FORELADY: Guilty.

THE CLERK: Count 17?

THE FORELADY: Guilty.

THE CLERK: Members of the jury, listen to your verdict as it stands recorded:

You say you find the defendant Grady guilty on counts 1, 2, 3, 4, 5, 6, 7, 8, 15, 16, 17, and 19, and you find the defendant Jankowski guilty on counts 1, 2, 3, 4, 5, 6, 7, 8, 15, 16 and 17.

(Each juror, upon being asked "Is that your verdict," responded in the affirmative.)

THE CLERK: So say you all?

THE COURT: At this time I will direct the clerk to record the verdict and I excuse the jurors. The Court appreciates your attendance here and the performance of your duty as jurors.

The clerk has your certificates to represent your services that you have rendered. At this time I would say to you you are released from my instruction that you may not discuss the case. You have all your rights of free speech of any citizen and you can say anything you want.

By the same token, you are not required to discuss your verdict or your reasons for your verdict with anybody. No person has a right to inquire of you or speak to you in

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FOLEY SQUARE NEW YORK N.Y. - 791-1020

any way about this case.

Should you consider that you are subject to any harassment by anybody you should be in touch with the chief judge of this court immediately. But you are free to say whatever you like. I generally tell jurors they may feel more comfortable if they don't discuss it with anybody. However, that is a matter of your own personal freedom and your right to do and say from now on what you please. I appreciate your prompt attendance and you may now withdraw from the courtroom and you are excused. As I have said, the gentleman here will give you your certificates.

(The jury were discharged and left the courtroom.)

THE COURT: I will direct that the United States probation officer make a full report with respect to each defendant. I am going to ask you to each attend at his office at the beginning of business on Monday morning. It's too late to go thereat this hour on Friday. So report to the United States probation officer on Monday morning. That is the direction of the court. And I will continue you both on your present bail arrangements.

I have instructed you previously as to your obligations concerning bail. I don't think I need to repeat it. I will fix a date for you to return before me for purposes of sentence. April 23 at 9:30 a. m. You are each

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obligated to be here at that time. We will be in recess.

MR. HOLMAN: At this time do you want to hear motions from the defense?

THE COURT: I think not If you want to wait until you get the transcript if you have anything of substance that you want to raise that hasn't already been reviewed in the record, you may do so. There is a jurisdictional period of ten days on it and if you want it extended the court must do so during the period within which you can make the motions. I'd be glad to do that for you. Do you want enlargement of time?

MR. DURKAN: I would merely formally move for the protection of my client, formally move that the verdict of the jury be set aside as being contrary to law, to fact and to the weight of the evidence and to all -- under all others --

THE COURT: You can make that motion for the record and when you get your transcript of the record if you want to send in any supporting material, you may do so. I will deem that motion made. Same thing for you, Mr. Bruce.

MR. BRUCE: Thank you, your Honor.

THE COURT: Good afternoon, gentlemen.

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SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE

GOVERNMENT'S EXHIBIT 1

PHONE: (914) 343-4103

ROBERTSON-BROS. INC.

Yacht & Boat Distributors

115 WISNER AVENUE • MIDDLETOWN, NEW YORK 10940

J & J BAIT & TACKLE
32 YONKERS AVENUE
YONKERS, NEW YORK 10701

J & J Bait & Tackle
32 Yonkers Ave
Yonkers
New York 10701

TERMS	SALESMAN	SHIPPED VIA	PACKED BY	CARTON NO.	PAGE	INSTRUCTIONS
NET	02	UPS	17	NONE	1	SEND C.O.D.

CUSTOMER DATE	INVOICE NO.	DATE SHIPPED	SPEC. PRICED BY	PACKED BY	CUST. PURCHASE ORDER NO.	TO PACK
5/08/17	05841	5/12/70	Paul	17		1

QUANTITY ORDERED	QUANTITY SHIPPED	C	DESCRIPTION	UNIT PRICE	NET AMOUNT
12 Ea	12	3	1000/30M11-B-Universal Marine 3Bld	75.00 ea-net	
			164173 171137	75.00	900.00
			167259 172315		
			173402 173424		
			171643 172767		
			170926 167161		
			165111 172218		

USA 336-475
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S. D. OF N. Y.
1

(3) T 900.00

INVOICE TOTAL

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OF LADING - SHORT FORM - Original - Not Negotiable

CARRIER

Shipper's No. 6641

Agent's No.

RECEIVED, subject to the classifications and tariffs in effect on the date of issue of this Bill of Lading.

J. & J. Bait & Tackle
32 Yonkers Ave.
Yonkers, N.Y.

FROM ROSKIN BROS., INC.
115 WISNER AVENUE
MIDDLETOWN, N.Y. 10940

DATE 5/3/72

ROUTE R.B.

DELIVERING CARRIER

The property described below, in apparent good order, except as noted (contents and condition of contents of packages unknown), marked, consigned, and destined as indicated above, which said carrier (the word carrier being understood throughout this contract as meaning any person or corporation in possession of the property under the contract) agrees to carry to its usual place of delivery at said destination, if on its route, otherwise to deliver to another carrier on the route to said destination. It is agreed, as to each carrier of all or any of said property over all or any portion of said route to destination, and as to each party at any time interested in all or any of said property, that every service to be performed hereunder shall be subject to all the terms and conditions of the Uniform Domestic Straight Bill of Lading set forth (1) in Uniform Freight Classification in effect on the date hereof, if this is a rail or a rail-water shipment, or (2) in the applicable motor carrier classification or tariff if this is a motor carrier shipment. Shipper hereby certifies that he is familiar with all the terms and conditions of the said bill of lading, including those on the back thereof, set forth in the classification or tariff which governs the transportation of this shipment, and the said terms and conditions are hereby agreed to by the shipper and accepted for himself and his assigns. (Mail or street address of consignee—For purposes of notification only.)

NO. PACKAGES	DESCRIPTION OF ARTICLES, SPECIAL MARKS, AND EXCEPTIONS	*WEIGHT (Subject to Correction)	CLASS OR RATE	CK. COL.
	FISHING TACKLE			
	SMALL ARMS AMMO.			
2	FIREARMS			
	HUNTING ACCESSORIES			
	ASS'T. SPORTING GOODS			

Subject to Section 7 of conditions, if this shipment is to be delivered to the consignee without recourse on the consignor, the consignor shall sign the following statement.
The carrier shall not make delivery of this shipment without payment of freight and all other lawful charges.
ROSKIN BROS., INC.
Signature of Consignor

If charges are to be prepaid, write or stamp here, "To be Prepaid."

Received $ _____ to apply in prepayment of the charges on the property described hereon.
Agent or Cashier
Per _____
(The signature here acknowledges only the amount prepaid.)

The fibre boxes used for this shipment conform to the specifications set forth in the box maker's certificate thereon, and all other requirements of Uniform Freight Classification.
Shipper's imprint in lieu of stamp; not a part of bill of lading approved by the Interstate Commerce Commission.

This is to certify that the above articles are properly described by name and are packed and marked and are in proper condition for transportation according to the applicable regulations prescribed by the Interstate Commerce Commission and the Secretary of Commerce.

*If the shipment moves between two ports by a carrier by water, the law requires that the bill of lading shall state whether it is "carrier's or shipper's weight."
Note.—Where the rate is dependent on value, shippers are required to state specifically in writing the agreed or declared value of the property.
The agreed or declared value of the property is hereby specifically stated by the shipper to be not exceeding
per

ROSKIN BROS., INC. SHIPPER, PER _____ AGENT, PER _____

Permanent post-office address of shipper, 115 Wisner Avenue, Middletown, N.Y. 10940

(This Bill of Lading is to be signed by the shipper and agent of the carrier issuing same.)

576a

GOVERNMENT'S EXHIBIT 1

GOVERNMENT'S EXHIBIT 2

PHONE: (914) 343-4103

ROSKIN BROS., INC.

Wholesale Distributors

115 WISNER AVENUE • MIDDLETOWN, NEW YORK 10940

ORDER DATE 7-15-72

J & J BAIT & TACKLE
32 YONKERS AVENUE
YONKERS, NEW YORK 10701

J & J Bait & Tackle
32 Yonkers Ave
Yonkers Upon York
10701

TERMS	SALESMAN	SHIPPED VIA	PACKED BY	CARTONS	PAGE NO.
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INVOICE DATE 7/19/72 | INVOICE NO. 23316 | DATE SHIPPED 7/15/72 | CHG'D BY | PACKED BY 4 pcs | W.O. OR SALES ORDER NO. | OF PAGES 1

SPECIAL INSTRUCTIONS GUNS & AMMO

QUANTITY ORDERED	QUANTITY SHIPPED	C	DESCRIPTION	UNIT PRICE		NET AMOUNT
10 ea	10 ea		1000/30MIB Universal Carb.	75.00	net	
	10	3	415 plot clips	75.00		750.00
			169302 ✓ 169603 ✓			
			171900 ✓ 170044			
			166438 ✓ 171744			
			171736 ✓ 170891			
			168062 ✓ 170633			

USA 336-475
(REV. 4-23-71)

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U. S. DIST. COURT
S. D. OF N. Y.
~~2~~

(3) 750.00

JM

INVOICE NUMBER | CODES 1 FISHING 2 REEL & ROD SALES 3 OTHER GOODS 4 AMMUNITION 5 SPORTING GOODS 6 MISCELLANEOUS | INVOICE TOTAL 750.00

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GOVERNMENT'S EXHIBIT 3

USA 33s-475
(Ed. 4-23-71)

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EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.
3

States of America

Certification

DEPARTMENT OF THE TREASURY
BUREAU OF ALCOHOL, TOBACCO AND FIREARMS

Date: MAR 13 1975

Pursuant to the provisions of Section 7514, Internal Revenue Code, certification of the attached records under the seal of the Department of the Treasury is requested:

I certify that John Linthicum, Acting Supervisor, Applications Examiners, of the Bureau of Alcohol, Tobacco and Firearms, North-Atlantic Region, New York, New York, has custody and control of all records filed and maintained in the North-Atlantic Region relative to applications for firearms licenses and the issuance and denial of firearms licenses under Chapter 44, Title 18, United States Code (Gun Control Act of 1968); that I am familiar with his signature; and, that I have examined his signature which appears on the annexed attestation and find it to be his true signature.

for the use of

For the Secretary:

M. L. Goodwin Jr.
REGIONAL DIRECTOR
ACTING

GOVERNMENT'S EXHIBIT 3

Date: March 12, 1975
4417 0274 8008K

TO WHOM IT MAY CONCERN:

I, John A. Linthicum, Acting Supervisor, Applications Examiners, of the Bureau of Alcohol, Tobacco and Firearms, North-Atlantic Region, attest and certify that I have custody and control of all records filed and maintained in the North-Atlantic Region relative to applications for firearms licenses and the issuance and denial of firearms licenses under Chapter 44, Title 18, United States Code, (Gun Control Act of 1968). A search of these records disclosed that John Jankowski, d/b/a J & J Bait Shop, 32 Yonkers Ave., Yonkers, New York, held license number 13-295 during the period from October 9, 1969 to 1975 as a dealer in firearms other than destructive devices or ammunition for other than destructive device.

John A. Linthicum
Supervisor, Applications
Examiners
Bureau of Alcohol, Tobacco
and Firearms

GOVERNMENT'S EXHIBIT 4

USA 33s - 475
(ED. 4-23-71)

Gov't
EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.
4

States of America

Certification

DEPARTMENT OF THE TREASURY
BUREAU OF ALCOHOL, TOBACCO AND FIREARMS

Date: MAR 13 1975

Pursuant to the provisions of Section 7514, Internal Revenue Code, certification of the attached records under the seal of the Department of the Treasury is requested:

I certify that John Linthicum, Acting Supervisor, Applications Examiners, of the Bureau of Alcohol, Tobacco and Firearms, North-Atlantic Region, New York, New York, has custody and control of all records filed and maintained in the North-Atlantic Region relative to applications for firearms licenses and the issuance and denial of firearms licenses under Chapter 44, Title 18, United States Code (Gun Control Act of 1968); that I am familiar with his signature; and, that I have examined his signature which appears on the annexed attestation and find it to be his true signature.

for the use of

For the Secretary:

M. L. Gordon Jr.
REGIONAL DIRECTOR
ACTING

GOVERNMENT'S EXHIBIT 4

Date: March 12, 1975
4417 0274 8008K

TO WHOM IT MAY CONCERN:

I, John A. Linthicum, Acting Supervisor, Applications Examiners, of the Bureau of Alcohol, Tobacco and Firearms, North-Atlantic Region, attest and certify that I have custody and control of all records filed and maintained in the North-Atlantic Region relative to applications for firearms licenses and the issuance and denial of firearms licenses under Chapter 44, Title 18, United States Code, (Gun Control Act of 1968). A search of these records disclosed that Francis M. Grady, 85 St. Andrews Place, Yonkers, New York, never executed or filed applications for firearms licenses under Chapter 44, Title 18, United States Code.

John A. Linthicum
Supervisor, Applications
Examiners
Bureau of Alcohol, Tobacco
and Firearms

GOVERNMENT'S EXHIBIT 5

DEPARTMENT OF STATE

Washington, D.C. 20520

USA 33s - 475
(ED. 4-23-71)

Govt
EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.
5 id

STATEMENT OF SEARCH OF RECORDS

DISTRICT OF COLUMBIA) ss

I, William B. Robinson, Director, Office of Munitions Control, Department of State, Washington, D.C. 20520 do hereby certify that I have custody of all records of the Department of State consisting of applications for registration of persons engaged in the business of manufacturing or exporting arms, ammunition and implements of war, including technical data relating thereto, and applications for such licenses, under the provisions of Section 414 of the Mutual Security Act of 1954, as amended (22 U.S.C. 1934), and the provisions and conditions promulgated thereunder. The records in my custody include all such applications and licenses for the period January 1, 1970 through January 31, 1976.

GOVERNMENT'S EXHIBIT 5

I further certify that, after diligent search of said records, no record has been found of any registration application by, any application for export license by, or any export license issued to, any of the following named persons with respect to the exportation of arms, ammunition and implements of war, including technical data relating thereto, during the period January 1, 1970 through January 31, 1976.

Francis Michael Grady

J. & J. Bait Shop

(Signature)

GOVERNMENT'S EXHIBIT 5

No. 76/3196

United States of America

DEPARTMENT OF STATE

ll to whom these presents shall come, Greeting:

I Certify That ----------William B. Robinson----------,

name is subscribed to the document hereunto annexed, was at the time

cribing the same--Director, Office of Munitions Control----------

----------, Department of State, United States

ca, and that full faith and credit are due to his acts as such.

In testimony whereof, I, Robert S. Ingersoll,

Acting Secretary of State, have hereunto caused the seal of the Department of State to be affixed and my name subscribed by the Authentication Officer of the said Department, at the city of Washington, in the District of Columbia, this second

day of March, 19 76.

Robert S. Ingersoll

Acting Secretary of State.

By Frances D. Fullum

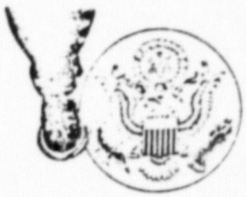
Authentication Officer, Department of State.

584a

This ...te is not valid if it is removed or altered in any way whatsoever

U.S. GOVERNMENT PRINTING OFFICE 16—84526-1

GOVERNMENT'S EXHIBIT 6



DEPARTMENT OF STATE

Washington, D.C. 20520

USA 33s-475
(ED. 4-23-71)

Govt
EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.

STATEMENT OF SEARCH OF RECORDS

)
DISTRICT OF COLUMBIA) ss:
)

I, William B. Robinson, Director, Office of Munitions Control, Department of State, Washington, D.C. 20520, do hereby certify that I have custody and control of all applications for licenses, registration and records of all licenses to export articles enumerated in the United States Munitions List, under the provisions of Section 414(b) of the Mutual Security Act of 1954, as amended, and as required under Title 22 United States Code, 1934, and the provisions and conditions provided and promulgated thereunder.

I further certify that after diligent search of said records, no evidence has been found to show that registration applications or applications for licenses were submitted by or that registration certificates or licenses were issued to, any of the following named persons authorizing the exportation

GOVERNMENT'S EXHIBIT 6

of arms, ammunition, or implements of war during the period January 1, 1970 through April 9, 1975.

Francis Grady

John Jankowski

William B Rubin

(Signature)

Subscribed and sworn to before me this 2nd day of [illegible] 1975

[illegible]

(Notary Public in and for the District of Columbia)

My commission expires 7/31/[illegible].

GOVERNMENT'S EXHIBIT 6

No. 75/6601

United States of America

DEPARTMENT OF STATE

to whom these presents shall come, Greeting:

I Certify That Mr. William B. Robinson, whose name is subscribed to ument hereunto annexed, was at the time of subscribing the same, , Office of Munitions Control, Department of State, United States ca, and that full faith and credit are due to his acts as such.

In testimony whereof, I, Robert S. Ingersoll, Acting Secretary of State, have hereunto caused the seal of the Depar ment of State to be affixed and my name subscribed by the Authent cation Officer of the said Department, at the city of Washington, the District of Columbia, this thirteenth day of May, 19 75.

Robert S. Ingersoll
Acting Secretary of State.

By [illegible]
Authentication Officer, Department of State.

Issued pursu 203, 5 USC 1948, 62 St of May 26, and Secs. 104 66 St. 174 5 USC 140.

5 USC Act of J 55; Sec 1, 5 USC of June 1104, 14

587a

This ce not valid if it is remov or altered in any way whatsoever

U.S. GOVERNMENT PRINTING OFFICE 16—80529-1

EXCERPTS FROM GOVERNMENT'S EXHIBIT 7

eproduced at pages 589a thru 596a.

Telephone
BELFAST 650222

BROOKLYN
KNOCK ROAD
BELFAST
NORTHERN IRELAND BT5 6LE

Sir Jamie Flanagan CBE
Chief Constable

23 February 1976

I, James Bernard Flanagan, C.B.E., am Chief Constable of The Royal Ulster Constabulary, the civil police for Northern Ireland, United Kingdom. Pursuant to the Firearms Act (Northern Ireland) 1969, as amended, the Constabulary (Ireland) Act 1836 and the Police Act (Northern Ireland) 1970 The Royal Ulster Constabulary is charged with securing, maintaining and disposing of all weapons within the territory of Northern Ireland which are not lawfully held by virtue of a statutory certificate or permit or otherwise in the possession of legitimate Governmental Authorities. Pursuant to this duty, officials of The Royal Ulster Constabulary under my supervision regularly make official records of the seizure, maintenance and disposal of all such weapons. These official records are maintained in my custody and control. I attest that the attached documents are true and accurate copies of original official records or entries therein, in my custody and control required by the nature of this office and made by officials of The Royal Ulster Constabulary under my supervision and in the course of their official duties.

James Bernard Flanagan

GREAT BRITAIN AND NORTHERN IRELAND)
COUNTY OF THE CITY OF BELFAST)
CONSULATE GENERAL OF THE UNITED STATES OF A'ERICA)

I, Peter Spicer, Consul General of the United States of America at Belfast, Northern Ireland, duly commissioned and qualified, do hereby make known and certify to all whom it may concern that the signature "James Bernard Flanagan" subscribed to the annexed certificate, is of the true and proper handwriting of The Chief Constable of the Royal Ulster Constabulary

that the seal affixed to the said certificate is the seal of the Royal Ulster Constabulary

and that to all acts signed as the annexed full faith and credit are and ought to be given in judicature and thereout.

In testimony whereof I have hereunto set my hand and affixed the seal of the Consular Service of the United States of America at Belfast, Northern Ireland, aforesaid, this 23rd day of February in the year of our Lord one thousand nine hundred and seventy six.

Peter Spicer
Consul General
of the United States
of America

T BRITAIN AND NORTHERN IRELAND)
TY OF THE CITY OF BELFAST) ss
ULATE GENERAL OF THE UNITED STATES OF AMERICA)

I, Peter Spicer , Consul General of the United Sta of America at Belfast, Northern Ireland, duly commissioned and lified, do hereby certify that the annexed document has been atte d by a person authorized to make the attestation.

IN WITNESS WHEREOF I have hereunto set my hand and affi the seal of the Consulate General of the United States of Ameri t Belfast, Northern Ireland, this 23rd day of February, 1976.

Peter Spicer
Consul General
of the United States
of America

Telephone
BELFAST 650222

ROYAL ULSTER CONSTABULARY

BROOKLYN
KNOCK ROAD
BELFAST
NORTHERN IRELAND BT5 6LE

Sir James Flanagan CBE
Chief Constable

23 February 1976

I, James Bernard Flanagan, C.B.E., am Chief Constable of The Royal Ulster Constabulary, the civil police for Northern Ireland, United Kingdom. I attest that the attached documents are true and accurate copies of the original records or entries therein of the Royal Ulster Constabulary in my custody and control which are required by the nature of this office and made by official personnel of The Royal Ulster Constabulary pursuant to and in furtherance of their lawful public duties.

James Bernard Flanagan

GREAT BRITAIN AND NORTHERN IRELAND)
COUNTY OF THE CITY OF BELFAST)
CONSULATE GENERAL OF THE UNITED STATES OF AMERICA)

I, Peter Spicer, Consul General of the United States of America at Belfast, Northern Ireland, duly commissioned and qualified, do hereby make known and certify to all whom it may concern that the signature "James Bernard Flanagan" subscribed to the annexed certificate, is of the true and proper handwriting of the Chief Constable of the Royal Ulster Constabulary

that the seal affixed to the said certificate is the seal of the Royal Ulster Constabulary

and that to all acts signed as the annexed full faith and credit are and ought to be given in judicature and thereout.

In testimony whereof I have hereunto set my hand and affixed the seal of the Consular Service of the United States of America at Belfast, Northern Ireland, aforesaid, this 23rd day of February in the year of our Lord one thousand nine hundred and seventy six.

Peter Spicer

Peter Spicer
Consul General
of the United States
of America

AT BRITAIN AND NORTHERN IRELAND
NTY OF THE CITY OF BELFAST
SULATE GENERAL OF THE UNITED STATES OF AMERICA

I, Peter Spicer, Consul General of the United States of America at Belfast, Northern Ireland, duly commissioned and qualified, do hereby certify that the annexed document has been attested by a person authorized to make the attestation.

IN WITNESS WHEREOF I have hereunto set my hand and affixed the seal of the Consulate General of the United States of America at Belfast, Northern Ireland, this 23rd day of February, 1976.

Peter Spicer
Consul General
of the United States
of America

BEST COPY AVAILABLE

f. No. 823/72

Name PATRICK J. McVLIGH

Address 18 FOREST STREET

BELFAST

ORDER FOR DISPOSAL OF FIREARMS/AMMUNITION

Firearms Act (Northern Ireland) 1969

WHEREAS THE (1) FIREARMS & AMMUNITION hereinafter described, was FOUND BY a Police Constable on or about (3) 21st JANUARY 72, in pursuance of Section 45(4) of the Firearms Act (Northern Ireland) 69. Now I, being a Chief Superintendent of the Royal Ulster Constabulary, do hereby order that the said (1) FIREARMS & AMMUNITION so (4) FOUND aforesaid, being (5) AS PER ATTACHED LIST

in respect of which a firearm certificate or firearm permit has not been granted, disposed of in the manner following, that is to say that the said (1) FIREARMS & AMMUNITION

shall be disposed of in such manner as the Chief Constable of the Royal Ulster Constabulary may direct.

J. Kerrigan

~~Chief~~ Superintendent
Royal Ulster Constabulary

Issued at Springfield Road, Royal Ulster Constabulary, Belfast, this 23rd day of JANUARY 19 73.

Insert "firearm" or "ammunition".
Insert "surrendered to", "seized by", or "found by", as the case may be.
Insert date.
Insert "surrendered", "seized", or "found", as the case may be.

823/72 595a

1 x .30 M1 Carbine No. 171189

3 x .30 M1 Ammo.

30 x .32 Ammo.

EXCERPTS FROM GOVERNMENT'S EXHIBIT 8

Reproduced at pages 598a thru 605a.

I, Stanley Orme, am a Minister of State for Northern Ireland. I certify that William Ewart Bell is the Permanent Secretary of the Department of Commerce in Northern Ireland.

A Stanley Orme,

24 February 1976

GREAT BRITAIN AND NORTHERN IRELAND
COUNTY OF THE CITY OF BELFAST
CONSULATE GENERAL OF THE UNITED STATES OF AMERICA

I, Peter Spicer, Consul General of the United States of America at Belfast, Northern Ireland, duly commissioned and qualified, do hereby certify that the annexed document has been attested by a person authorized to make the attestation.

IN WITNESS WHEREOF I have hereunto set my hand and affixed the seal of the Consulate General of the United States of America at Belfast, Northern Ireland, this 25th day of February, 1976.

Peter Spicer

Peter Spicer
Consul General
of the United States
of America

GRE[illegible]RITAIN AND NORTHERN IRELAND)
COU[illegible] OF THE CITY OF BELFAST)
CON[illegible]TE GENERAL OF THE UNITED STATES OF A'ERICA)

[illegible], Peter Spicer, Consul General of the
Uni[illegible] States of America at Belfast, Northern Ireland, duly
com[illegible]sioned and qualified, do hereby make known and certify to
all[illegible]om it may concern that the signature" Stanley Orme "
sub[illegible]bed to the annexed certificate, is of the true and proper
han[illegible]iting of Stanley Orme, Minister of State for Northern
Ireland
tha[illegible]e seal affixed to the said certificate is the seal of the
Northern Ireland Office
and[illegible]t to all acts signed as the annexed full faith and credit
are[illegible] ought to be given in judicature and thereout.

In testimony whereof I have hereunto set my hand and affixed the seal of the Consular Service of the United States of America at Belfast, Northern Ireland, aforesaid, this 25th day of February in the year of our Lord one thousand nine hundred and seventy six.

Peter Spicer

Peter Spicer
Consul General
of the United States
of America

BEL-[illegible]

BEST COPY AVAILABLE

DEPARTMENT
~~MINISTRY~~ OF COMMERCE
64 CHICHESTER STREET
BELFAST BT1 4JX

I, William Ewart Bell, am Permanent Secretary of the Department of Commerce. I certify that the Department of Industrial and Forensic Science is a Division of the Department of Commerce under my supervision. I certify that Alfred John Howard is the Director of the Department of Industrial and Forensic Science and that the signature appearing on the attached Certification of the Director is that of Alfred John Howard.

24 February 1976

Department of Commerce
Department of Industrial and Forensic Science
180 Newtownbreda Road Belfast BT8 4QR
Telex 747025 Telephone 645421
Director A J Howard MA PhD FRIC

Our reference:
Your reference:

I Alfred John Howard MA PhD FIFST C Chem FRIC am the Director of the Department of Industrial and Forensic Science. I attest that the Department of Industrial and Forensic Science is charged with providing expert evidence to the Courts and that the official records of this office are maintained pursuant to the lawful duties of this office and required by the nature of this office. I certify that John Ivan Walter Hill is the custodian of the official records of the Department of Industrial and Forensic Science and that the signature appearing on the attached attestation is that of John Ivan Walter Hill and that he is authorised to make the attestation.

a J Howard

Department of Commerce
Department of Industrial and Forensic Science
180 Newtownbreda Road Belfast BT8 4QR
Telex 747025 Telephone 645421
Director A J Howard MA PhD FRIC

Our reference:
Your reference:

I John Ivan Walter Hill am Senior Liaison Officer of the Department of Industrial and Forensic Science. I attest that I am the custodian of the official records of the Department of Industrial and Forensic Science and that the attached documents are true and accurate copies of the official records of entries therein of the Department of Industrial and Forensic Science, which records are maintained pursuant to the lawful duties of this office and required by the nature of this office.

J. I. W. Hill

DEPARTMENT OF INDUSTRIAL AND FORENSIC SCIENCE

(MINISTRY OF COMMERCE)

Director:
A. J. HOWARD, M.A., Ph.D., F.R.I.C.
Our Ref. [illegible]
Your Ref. _____

5-11 Verner Street,
BELFAST BT [illegible]
Telephone No. [illegible]

Source of Material forwarded for Examination

Division "F" Sub-Division Dungarvy

(1) Name, age, occupation and address of injured person(s)	The Queen.
(2) Nature of occurrence	Found in possession of Arms and ammunition.
(3) Place of occurrence	25 Dalebrook Park, Andersonstown.
(4) Date and time committed	23.2.72. 9.20 p.m.
(5) Name, age and occupation of person(s) charged or summoned	Joseph McNeill, 33 years, Fitters Mate, 25 Dalebrook Park, Andersonstown.
(6) Person in charge of case (Name, rank and telephone No.)	C. P. McGarry, D/Constable. [illegible]
(7) Court and place	
(8) Date and time of hearing (if known)	
(9) Date report of examination required	
(10) Report to be addressed to (Name of Chief Constable)	D/Constable McGarry, R.U.C. Dungarvy.
(11) Police area	
(12) Name and address	

604a

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MATERIAL FORWARDED FOR EXAMINATION

Carbine No.	Description and Source of Material
✓	[illegible]
	1 I. Garbine No. [illegible].
	1 I. Carbine No. 16077.
	1 Shotgun No. 6627.
	1 Shotgun - Lake View"
	1 .22 rifle cartridge.
	1 steel box containing 27 rds. .30 ammunition.
	1 plastic box containing 100 rds. .45 ammunition.
	1 plastic box containing 40 rds. .45 ammunition.
	1 plastic box containing 20 rds. .300 ammunition.
	1 plastic box containing 27 rds. 7.62 ammunition.
	1 plastic box containing 100 rds. 7.62 ammunition.
	1 electric switch.
	1 plastic box containing 16 rds cal unknown.
	1 roll of wire.
	1 box containing 20 rds. 7.65 ammunition.
	1 green envelope.

Name [illegible]

Rank or Profession

Material Received, Numbered 1-17.

Date Sent

Date and Time Received 3 3 72.

Name

Rank or Profession

AFTER EXAMINATION

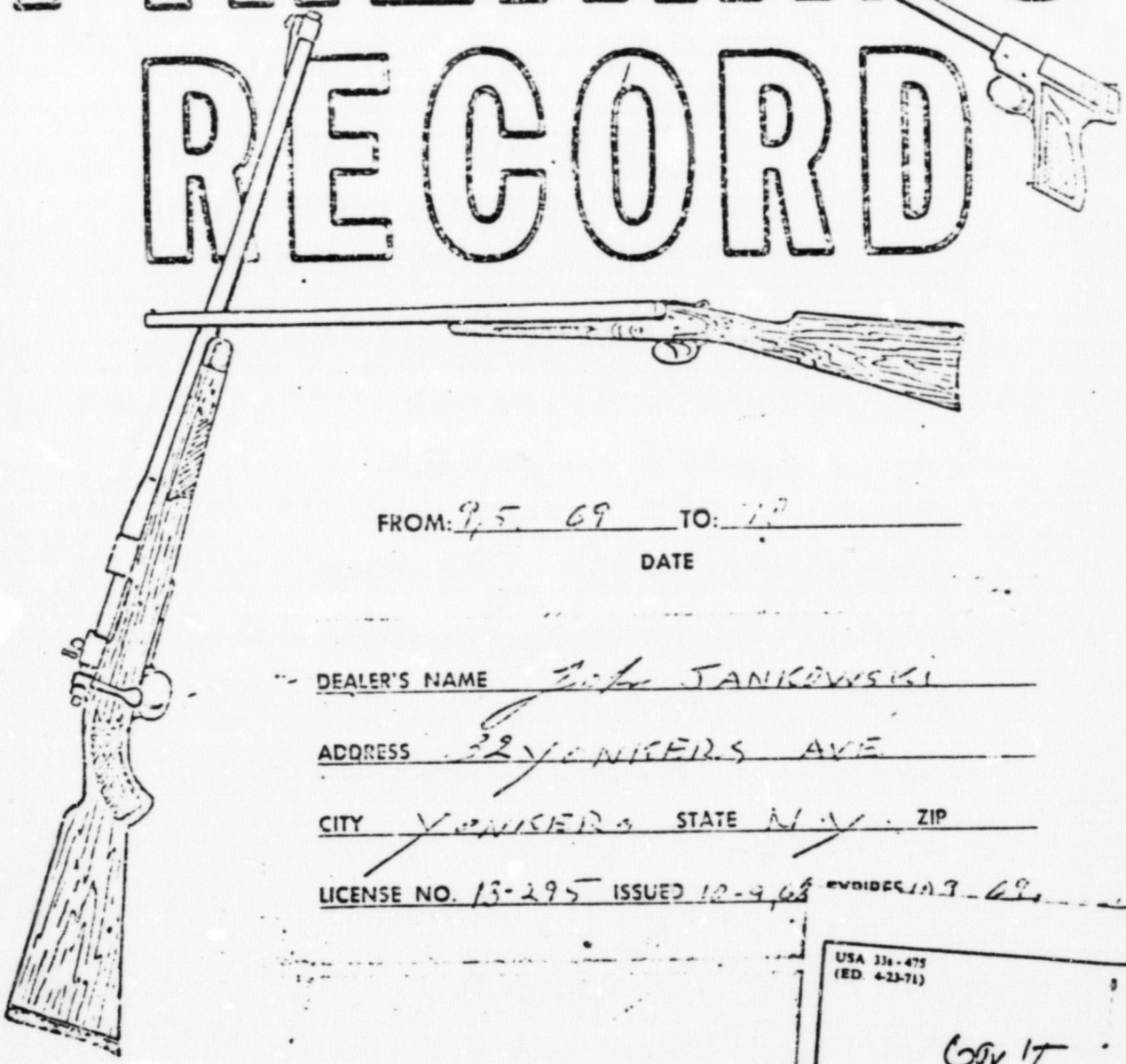
Name

Rank or Profession

605a

GOVERNMENT'S EXHIBIT 9

FIREARMS RECORD



FROM: 9.5.69 TO: 11.7
DATE

DEALER'S NAME Eugene JANKOWSKI

ADDRESS 22 YONKERS AVE

CITY YONKERS STATE N.Y. ZIP

LICENSE NO. 13-295 ISSUED 12-9-68 EXPIRES 1-1-69

USA 33a-475
(ED. 4-23-71)

GOV'T
EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.
9 id

COMPLIMENTS OF

NATIONAL SHOOTING SPORTS FOUNDATION, INC.
1075 POST RD., RIVERSIDE, CONN. 06878

SPORTING A
MANUF.
NEW

GOVERNMENT'S EXHIBIT 9

PAGE 8

FEDERAL FIREARMS RECORD

MAKE OF GUN	MODEL NUMBER	CALIBER, GAUGE	SERIAL NUMBER	TYPE OF ACTION	BOUGHT FROM	
					DATE	NAME & ADDRESS OR F.F.A. LICENSE NO.
[illegible]	5J [illegible] WINTR.	12 GE	3711 9426	[illegible]	5.4.70	ITHICA
• #31)	"	12	3711 [illegible]	"	5.4.70	" X
UNIVERSAL	1000	30	17221X	M.L.B.	5.4.70	RESIDENCE
"	"	"	169174	"	"	
"	"	"	167659	"	"	
"	"	"	172420	"	"	
"	"	"	170443	"	"	
"	"	"	170426	"	"	
"	"	"	170111	"	"	
"	"	"	171004	"	"	
"	"	"	172315	"	"	RESIDENCE
"	"	"	173269	"	"	
"	"	"	172767	"	"	
"	"	"	167661	"	"	RESIDENCE
REMINGTON	580	22 cal	1021353	Bolt	5-11-70	H-I
"	742 BDL	30/cal	70 20355	AUTO	5-19-70	H-I
BRALINIG	SEMI AUTO	16	69 SG 743 [illegible]	AUTO	5-19-70	BRALINIG
"	LIGHT 12	12	69 [illegible]	AUTO	5-19-70	"
"	"	12	69 [illegible]	AUTO	5-19-70	"
"	"	12	69 [illegible]	AUTO	5-19-70	"
"	DELUXE	30-06	[illegible]	AUTO	5-19-70	"
"	GRADE I	22	[illegible]	AUTO	5-19-70	"
[illegible]	351 C	22	81776	SEMI AUTO	6.3.70	H.I.
[illegible]	1100	12 GA	621765	SEMI AUTO	6.3.70	H.I.

GOVERNMENT'S EXHIBIT 9

Federal Firearms Act Sec. 177.51, states in part, "The records prescribed by this section shall be in permanent form, and shall be retained on the business premises for a period of not less than ten years from the date the transaction occurs or until discontinuance of business by the licensee."

SOLD TO

ATE	CUSTOMER'S NAME	ADDRESS
1 70	EDWARD A DELI	98 CARYIEL AVE YONKERS N.Y
23 70	Angelo Carbone	76 Maple St Yonkers N.Y
4 70	Frank Leahy A-4	95 St Andrews Ct Yonkers N.Y
4 70	John J. O'Brien C-2	25 Overlook Terrace Yonkers N.Y.
4 70	John J. O'Brien C-3	25 Overlook Terrace Yonkers N.Y.
	4/29 Caucasian 5'10" 120 33 4369	704 7650
7 70	Joseph Fanning	48 Lincoln Ter. Yonkers, N.Y.
7 70	Joseph Fanning	48 Lincoln Ter. Yonkers N.Y.
6 71	John M. Cleary C-1	325 Ridedale Ave Yonkers
1 70	Martin McCarthy E-1	102 Highland Ave.
2 70	William Cleary A-6	5'11" 165 6'3" 251 5 Ritter Lane 058-40-0501
7 70	[illegible]	61 72 [illegible]
7 70	Frank Leahy A-5	95 St Andrews Ct Yonkers N.Y
2 70	John McCleary	5'10" 325 Ridedale Ave 140 Yonkers N.Y.
2 70	Martin McCarthy E-2	102 Highland Ave.
3 71	[illegible]	[illegible] Yonkers
5 71	Patricia Kolacki	10-2-47 058-40-0166 102 Elm Ave Mt Vernon N.Y.
		1-11-24 177 18-7245
25 70	Raymond Scott Wellington	Acton Falls N.H. 054-444-2175
4 70	CATERINA ANTONIO C VAN COURT	FRM YONKERS 6-10-29 So. Sec 134-46-6618
70	A Arnillo	13 VANCORTLAND YONKERS 15 NOV 1932
70	Chas D Pitt	72 Linden 11 6 3/12 054-34-7262
	01/2 2/49	5'9" 160 Lbs. Brown 047-38-0402
70	Michael Yanno	376 Martin St Peekskill Westchester N.Y.
71	Harry J. Patterson	955 North Broadway Apt 2F Yonkers N.Y.

GOVERNMENT'S EXHIBIT 9

PAGE 10 F

FEDERAL FIREARMS RECORD

AKE OF GUN	MODEL NUMBER	CALIBER, GAUGE	SERIAL NUMBER	TYPE OF ACTION	BOUGHT FROM DATE	BOUGHT FROM NAME & ADDRESS OR F.F.A. LICENSE NO
ARLIN	99 MI	22 LR.		S. AUT	6.4.70	SEBASTIAN CENTRAL 2 SPALMER Rd Y. ANGELES
RALINIG	DLUX	22 L.R.	70B22578	LE. EK.	6.9.70	BRLIN
- -	STANDA	22 S.L	70B20648	LE EK	6.9.70	- -
EMIG	66	22 L.R. ONL	2120077	S. ALIT	6.11.70	Howard E Tucker Jr 36 Chestnut St
TIVEN	58	16 GA	NI	BOLT RL	6.11.70	Howard E Tucker Jr 36 Chestnut St
EMIN	1100	12 GA M	L221335	AUT	6.12.70	H. I.
RAUNI	CAMBAR LAITI 2 BL	12	70G 25526	AUTO	6.23.70	BRALINIG
1	1 1	12	70G 26189	- -	6.23.70	- -
ARLIN	922 MA	22	M2 6925525	7 SH RL S AUT	6.24.70	BOSTON BRO
GER	BUCKAR	44M.	D12755	S-A	6.29.70	Chas Stanley [illegible] ADDRESS
EMIG	270	12GA	0117837	[illegible]	6.30.70	VIC ALT ACC NOT 9TH AVE NYC
26 O RAUNIG	STANDARD	22	70B 24675	LEVER	7.14.70	BRAUNIG
NIVERSAL	100P	8P	169302	S AUT	7.16.70	BOSTON
- -	- -	30	171900	-	- -	- -
- -	- -	-	160452	-	- -	- -
-	- -	- -	171726	-	-	-
-	-	-	162766	-	-	-
-	-	-	169603	-	-	-
-	-	-	171744	-	-	-
-	-	-	178391	-	-	-
-	-	-	170694	-	-	-
-	-	-	175633	-	-	-
[illegible]	200 B	245	22[illegible]	[illegible]	7.17.70	FALCON CO [illegible]
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]

GOVERNMENT'S EXHIBIT 9

Federal Firearms Act Sec. 177 51, states in part, "The records prescribed by this section shall be in permanent form, and shall be retained on the business premises for a period of not less than ten years from the date the transaction occurs or until discontinuance of business by the licensee."

SOLD TO		
.TE	CUSTOMER'S NAME	ADDRESS
170	Nick Carillo	63 Garfield St. Yonkers N.Y. Pistol Permit # 6646 (Feb 6-1940
2370	Tom Piemonte	[illegible] N.Y.
270	Wm Retacco - 7 North 9th Ave	Mt Vernon May 3-1909-072-61-6622
70	Joss Glover	416-68-03 50 Sat. B. 453 Nepperhen Ave Yonkers Nov 30, 36
270	Joseph Tocci	30 Locust Hill Ave Yonkers N.Y. 033-24-1521
1170	Jeff Dupont	[illegible] Mt Vernon N.Y. 9/21/25
170	Leonard V. Carito	119 Crescent Place Yonkers N.Y. DOB 4/15/43
ETIAR 70	Edward W. Clark	334 Hoover Rd. Yonkers, N.Y. 6/19/45
70	Frank Ackerman	[illegible] Lincoln Ave Tuckahoe N.Y.
1670	Stephen Cecchich	20 Mark Lane Hastings N.Y.
270	John J. Hourigan	28 Joss Ave Yonkers N.Y.
270	John J. Hourigan	28 Joss Ave Yonkers N.Y.
170	James Schneizer	21 Coolidge Ave Yonkers N.Y. 4/28/34 100-28-7713
1270	William [illegible]	53 Warburton Ave 5-17-43
2270	R. J. Domizio	380 McLean Ave Yonkers N.Y.
2270	Edward J. McMorris	RD 3 Stokum Ave Mahopac N.Y. 12/24/
1270	James Schneizer	21 Coolidge Ave. Yonkers N.Y. 4/28/34 100-28-7713
270	Edward J. McMorris	RD 3 Stokum Ave Mahopac N.Y. 12/24/40
270	R. J. Domizio	380 McLean Ave Yonkers N.Y.
270	[illegible]	[illegible]
70	[illegible]	[illegible] 1/22/51
70	MacDonald	13-147 1, 17, 1 [illegible]

GOVERNMENT'S EXHIBIT 10

This is to certify that JACK O'BRIEN of Yonkers, New York did on 5-16-1970, transfer ownership of and responsibility for U.S. Carbine Cal. .30. M-1 Serial No(169173) and Serial No(167659) to Patrick Armstrong of 475 Palisade Ave Bx who is neither a convicted felon, under indictment, a fugative from justice, a drug addict, nor an enemy of the United States of the State of New York.

Transferor Jack O'Brien B-1 mr

Transferee Patrick Armstrong B-2 mr

(A 38-475
D. 4-23-71)

GOV'T
EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.

10 mil

GOVERNMENT'S EXHIBIT 11

This is to certify that Edward McMorris of Yonkers, New York did on 7/23 1970, transfer ownership of and responsibility for U.S. Carbine Cal. 30. M-1 Serial No(169603) and Serial No(17891) to MICHAEL O CALLAGHAN of 2656 ~~MOSH~~ DECATUR AVE BRONX who is neither a convicted felon, under indictment, a fugitive from justice, a drug addict, nor an enemy of the United States or the State of New York.

Transferor: Edward McMorris I-1 mt

Transferee Michael O Callaghan A-1 mt

33s - 475
(4-23-71)

Gov't
EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.

ID

GOVERNMENT'S EXHIBIT 12

This is to certify that R.J. Domizio of Yonkers, New York did on _____ 1970, transfer ownership of and responsibility for U.S. Carbine Cal. .30. M-1 Serial No(1683666) and Serial No(170094) to Frank McArdle of 6 King Avenue, Yonkers N.Y. who is neither a convicted felon, felon, under indictment, a fugitive from justice, a drug addict, nor an enemy of the United States or the State of New York.

Transferor R.J. Domizio G-4 mgr

Transferee Frank McArdle A-3 mgr

USA 33s - 475
(ED. 4-23-71)

Gov't
EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.
12 ~~id~~

GOVERNMENT'S EXHIBIT 18

USA 33s - 475
(ED. 4-23-71)

Gov't
EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.
18 A

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Appendix

IS HEREBY ADMITTED.

DATED:

Attorney for

STATE OF NEW YORK
COUNTY OF NEW YORK

EDWARD TAYLOR being duly sworn deposes and says: On August 16th, 1976 I served the within ~~record on appeal brief~~ appendix on Kenneth B. Bruce the attorney for the ~~respondent~~ appellant John Jankowske by ~~leaving~~ mailing ~~three~~ one copies thereof at his office located at 2090 Seventh Avenue New York, New York 10027

Edward Taylor

Sworn to before me this 16th day of August 1976

Lillian Weisberg

LILLIAN WEISBERG
COMMISSIONER OF DEEDS
CITY OF NEW YORK 4-1401
Certificate filed in New York County
Commission Expires September 1, 1978

COPY RECEIVED
ROBERT B. FISKE JR.
AUG 18 1976